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HISTORIC PRESERVATION IN SAN FRANCISCO

*An Evaluation Of Programs
Affecting Historic Resources*

For

**THE NATIONAL TRUST FOR HISTORIC PRESERVATION
And
THE SAN FRANCISCO DEPARTMENT OF CITY PLANNING**

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HISTORIC PRESERVATION IN SAN FRANCISCO

AN EVALUATION OF PROGRAMS AFFECTING HISTORIC RESOURCES

for

THE NATIONAL TRUST FOR HISTORIC PRESERVATION

and

THE SAN FRANCISCO DEPARTMENT OF CITY PLANNING

**Companion Study for the Development of a Preservation Element
for the San Francisco Master Plan**

**H. Grant Dehart
Nancy Shanahan
Consultants**

January, 1987

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TABLE OF CONTENTS

EXECUTIVE SUMMARY.	i
1. GENERAL DISCUSSION OF PRESERVATION ISSUES	1
a. What is the appropriate scope of preservation in the Master Plan element?	2
b. What is the value of historic preservation to San Francisco?	3
c. How specific and enforceable should the historic preservation policies and controls be?	5
d. With specific zoning controls and Master Plan policies, is there a need for landmark or historic district designations?	6
e. Should historic preservation be integrated into planning, zoning, and permitting functions of the City?	7
f. How many architectural, historic, and cultural resources should be preserved?	8
g. What level of government involvement is appropriate?	9
h. To what extent should private property rights and tastes be sacrificed to those of the public?	10
i. Should several types of district designations be developed?	10
j. Should a standardized approach to building surveys be adopted?	11
2. LEGAL BACKGROUND	12
a. The role of the Master Plan	12
b. Relationship to preservation ordinances and other land use regulations	13
c. Guidelines for developing a preservation element .	15
d. The role of the City charter	16
3. EVALUATION OF OTHER MASTER PLAN ELEMENTS	18
a. General issues and findings	18
b. An evaluation of other Master Plan elements	18
4. EVALUATION OF THE PLANNING CODE	21
a. General zoning provisions	21
b. Article 1.2: Dimensions, areas and open spaces . . .	21
c. Article 1.5: Off-street parking and loading	22
d. Article 1.7: Compliance	23
e. Article 2: Use districts	24
f. Article 2.5: Height and bulk districts	25
g. Article 3: Zoning procedures	26
h. Article 6: Signs.	30

5. ARTICLE 10,,THE LANDMARKS ORDINANCE	33
a. Problems with the present landmarks program	33
b. Evaluation of provisions of Article 10	39
c. Evaluation of the standards of historic district ordinances.	55
Jackson Square historic district	55
The Webster Street historic district	59
Northeast Waterfront historic district	61
Alamo Square historic district	64
Liberty Hill historic district	67
6. REVIEW OF SUB-AREA PLANS	70
a. The Downtown Plan	70
General provisions:	72
Article 11: Preservation of buildings and districts	78
b. The Chinatown Plan:	85
c. The Civic Center Comprehensive Plan	88
d. Neighborhood commercial rezoning.	89
e. North of Market residential special use district	92
f. Northeast Waterfront Plan	95
g. Rincon Hill Plan	96
h. South of Market Plan	97
i. Van Ness Avenue Plan	98
7. STATE HISTORIC PRESERVATION LEGISLATION	101
a. Property tax reduction	101
1. The <u>Mills Act</u>	102
2. <u>Open Space Easement Act of 1974</u>	103
3. <u>California Conservation Easements Act of 1979</u>	105
b. Income tax savings	106
1. Gifts of easements	106
2. Estate tax savings	106
c. Building code relief	107
1. The State Historical Building Code	107
2. The Uniform Building Code	108
d. Tax-exempt financing	108
1. <u>Marks Historical Rehabilitation Act of 1976</u>	110
f. <u>The California Environmental Quality Act of 1970</u> (CEQA)	111
g. <u>California Park and Recreational Facilities Act of</u> <u>1984</u>	115
8. FEDERAL HISTORIC PRESERVATION LEGISLATION	117
a. The <u>National Historic Preservation Act of 1966</u>	117
1. The National Register of Historic Places	117
2. Grants and Loans	118
3. Section 106: Advisory Council on Historic Preservation review	120
b. The <u>Economic Recovery Tax Act</u> and the <u>Tax Treatment</u> <u>Extension Act</u>	121
1. Investment tax credits (ITCs)	121

2. Deductions for charitable contributions	123
c. The <u>National Environmental Policy Act</u> (NEPA)	123
f. Section 4(f) of <u>the Department of Transportation Act of 1966</u>	123
g. Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, National Park Service	124

10. ALTERNATIVE MANAGEMENT APPROACHES FOR HISTORIC PRESERVATION	129
a. Functions of a comprehensive historic preservation program	129
b. Alternative management approaches	132
1. A Department of City Planning preservation section	132
2. A new Landmarks Commission	136
3. An Integrated Landmarks Board and Department of City Planning preservation program	138
4. Landmarks advisory boards for each large historic district	143
5. Separation of historic preservation from architectural preservation	144
c. Assumptions	147
11. RECOMMENDATIONS	150

APPENDICES

A. Review of preservation programs in other cities	163
B. Bibliography	190
C. Footnotes and legal references	192
D. Procedures for Certified Local Government historic preservation program	195
E. Professional Qualifications Standards, National Park Service	209

TABLES:

Historic preservation-related policies in the Master Plan	following page 20
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Table 1: Commerce and Industry
Table 2: Community Safety
Table 3: Recreation and Open Space
Table 4: Residence
Table 5: Transportation
Table 6: Urban Design

EXECUTIVE SUMMARY

HISTORIC PRESERVATION IN SAN FRANCISCO

AN EVALUATION OF PROGRAMS AFFECTING HISTORIC PRESERVATION

H. Grant Dehart
Consultant

This is a summary of an evaluation report designed to assist the San Francisco Department of City Planning develop a Historic Preservation Element for the City's Master Plan. The attached report provides an evaluation of the City's existing programs affecting historic preservation, state and federal laws and programs for historic preservation, and a review of preservation programs in other major cities. It includes a description of alternative management approaches for implementing a Master Plan historic preservation element, assumptions related to the selection of one of these alternatives, and the author's recommendations.

This report was consolidated from two draft reports prepared by the consultants. In one, Nancy Shanahan reviewed the legal context for preservation planning, state and federal preservation legislation, and the programs of other cities. The draft report by the above author outlined key issues, evaluated San Francisco's existing laws, programs, and plans for historic resources, identified alternatives and assumptions, and made recommendations for improvement in the City's management system for these resources. Since Ms. Shanahan was out of the country when the consolidated report was prepared, she was unable to participate in the formation of the alternatives, assumptions, and recommendations presented in it. These recommendations, therefore, represent only the views of the above author.

Recent advances in the City's commitment to protect architectural and historic resources, such as the Downtown Plan and new preservation policies in several sub-area plans, represent an opportunity and a challenge to develop a coherent policy framework for historic preservation for all of San Francisco.

At the time this report was completed, the Department of City Planning was preparing a new Historic Preservation Element of the San Francisco Master Plan. In addition, the above author had prepared a proposed revision to Article 10 of the Planning Code, for preservation of historic, architectural and aesthetic

landmarks; and a new Article 12, for conservation of neighborhoods and other special areas.

PRESERVATION ISSUES

San Francisco has made major advances in historic preservation over the past five years through the Downtown Plan, plans or rezoning for other sub-areas, and the designation of new historic districts. However, these efforts have been uncoordinated, with different approaches to preservation used in each area. Article 10 of the Planning Code is outdated and provides only limited protection for some of the City's most important landmarks and historic districts. Compared to other cities of the same size and architectural importance as San Francisco, the City has protected too few buildings from demolition, although none of those that have been designated for protection have been demolished, in spite of the weakness of the ordinance.

Several issues need to be resolved to improve and make more consistent the management and protection of historic and architectural resources.

One key issue is whether San Francisco should adopt a time-tested model for managing historic resources, based on the concept of a separate and independent historic commission, or whether it should build upon the model of the Downtown Plan, which successfully integrates historic preservation into comprehensive planning and zoning. In the Downtown Plan model the authority for administering preservation controls is shared between the Landmarks Board, the Department of City Planning, and the Planning Commission. This report proposes the integration of parts of both approaches for a comprehensive city-wide preservation program.

Another key issue is how the City should organize its resources most effectively to identify, evaluate, designate and treat historic resources that are not now protected by landmark or historic district designations, or by sub-area plans for the downtown and surrounding transition areas. Architectural surveys in existence are either too limited geographically, or were done with incomplete information about the history or significance of the structures. Some surveys have omitted many important buildings or have no official status for use in the review of permits for demolition or new development.

One issue that may be significant, if federal and state financial resources are made available for local historic preservation programs, is the extent to which San Francisco's preservation programs could qualify as a Certified Local

Government preservation program under state and federal standards.

These key issues, and others discussed below, can be resolved through a new historic preservation element of the City's Master Plan, which the Department of City Planning is now developing for public review. But what should a historic preservation element include?

The City's historic preservation element and measures for its implementation should define the scope of historic preservation programs. Historic preservation as a public value needs to be clarified relative to other values. Preservation policies need to be specific, enforceable, and integrated into routine zoning rules for new development. Permissive zoning can encourage demolition of landmarks and historic areas, so height and bulk limits for preservation sites should be adjusted to minimize pressures to demolish historic structures, as needed.

It is difficult to determine how many historic resources need to be protected until adequate surveys are completed. The adequacy and consistency of such surveys for policy and regulation is a major concern. The City has established its rights to regulate for preservation in the public interest, but an appropriate balance between government and private property rights remains to be set.

There are several types of historic areas that need protection, but vague standards and purposes in existing historic district ordinances invite conflict. Historic district ordinances need to be improved, and priorities for identification, evaluation and designation of landmarks and historic districts need to be established. Many more historic areas and significant buildings would likely qualify for protection than are now designated.

LEGISLATIVE BACKGROUND

California law directs local government to adopt a comprehensive long-range general plan, but historic preservation is an optional element of such plans. State consistency requirements between zoning and comprehensive plans do not apply to San Francisco, due to its status as a charter city. State enabling legislation also authorizes the establishment of historic district ordinances and zoning for the protection of historic and aesthetic resources, along with special review boards for their implementation, but the details of local programs are not specified or limited.

California has a number of laws to encourage the preservation of historic and architectural resources and natural

areas. Most applicable to San Francisco are: 1) tax assessment reductions for property restricted by local regulation or conservation easements; 2) income and estate tax reductions for the donation of historic property and conservation easements; 3) tax-exempt bond financing and park land bond funds for historic property rehabilitation; 4) the State Historic Building Code; and 5) the California Environmental Quality Act, providing a public review and environmental evaluation of decisions affecting historic resources. Full utilization of state preservation programs should be a goal of the preservation element, but they do not constrain the policies and management options of the City.

Federal preservation legislation is equally important in San Francisco, because of the generous tax incentives for historic rehabilitation and environmental laws requiring review of federally sponsored actions that would adversely affect historic resources. Aggressive use of these laws is part of the City's management responsibility for historic resources, but they have less bearing on the preservation element of the Master Plan.

MASTER PLAN ELEMENTS

The City has adopted Master Plan elements for commerce and industry, community safety, environmental protection, recreation and open space, residence (housing), transportation, and urban design. Geographically specific elements have been incorporated into the Master Plan, but these are addressed in the section on sub-area plans. In general, the policies of all Master Plan elements support historic preservation, but due to the general nature of most policies and the inherent "balance" that the Master Plan must achieve, internal conflicts are inevitable. Such conflicts between policies are usually worked out by the Planning Commission in case-by-case decisions on permits and plans. Additional specific policies, provided by a historic preservation element, would ensure that these Planning Commission decisions would be sensitive to historic preservation. More detailed guidance for public decisions affecting historic resources must be provided by ordinances, regulations, and guidelines. Unfortunately, many historic ordinances also lack specificity.

If enforced independent of other Master Plan policies, some policies could conflict with historic preservation, but they are typically balanced with others that favor preservation. Those that could conflict with historic preservation include: 1) "encourage extension of ... health and education services" (commerce); 2) "develop major open spaces on Embarcadero piers" and "create distinct openings in ... dominant streetwall form of the downtown" (recreation); 3) "encourage development of housing on surplus ... public lands" and "streamline the permit and environmental review process to expedite housing" (residence); 4) "seek ... new off-street facilities for freight ... for old

buildings" (transportation); and 5) "promote ... visual transitions between new and older buildings," and "relate the height of buildings to the height ... of existing development" (urban design). As an example, it has become clear that this last policy has been used, in both proposed plans (e.g. Chinatown) and case-by-case project review (e.g. 212 Stockton Street), as a rationale for approval of projects on sites of low-scale historic structures in order to encourage "transition" buildings between high-rise buildings and a lower scale historic context. This is an urban design policy that needs to be conditioned with protection policies for historic structures and neighborhoods.

Strong policies favoring preservation of historic and architecturally significant buildings and neighborhoods can be found primarily in the urban design and residence elements, but all elements except Environmental Protection contain some reference to such resources. Under state law, "environmental protection" is defined as the natural environment.

PLANNING CODE EVALUATION

The Planning Code presents many opportunities to improve protection of historic and architectural resources, in addition to those found in Article 10 (Landmarks) and Article 11 (Downtown Plan preservation). It provides the principal body of law for both the protection of historic resources and for the control of new development that could indirectly threaten such resources.

Purposes of the code should include "protection of the City's architectural and cultural heritage." The height and bulk limits in certain areas, such as Van Ness Avenue, the C-M district, and parts of the Mission, Western Addition, Buena Vista, and the neighborhoods with draft plans being prepared, appear to allow excessive or out of scale development in areas where historic structures are concentrated. For example, a 9:1 floor area ratio in the C-M zoning district is as high as the financial district and would permit buildings substantially larger than many important buildings in this area. A 200 foot height limit on the southern boundary of Jackson Square threatens the scale of the historic district. Transfers of development rights have only limited utility outside of the downtown, because of other controls. Loopholes in the compliance section could permit the demolition of architecturally significant unreinforced masonry buildings without adequate review.

Preservation of the architectural character of residential districts is encouraged in the purposes of Section 206. Controls for some special use districts, such as the Northeast Waterfront, are in need of revision, to be compatible with the new Downtown Plan and the City's recent recognition of architectural resources in these areas. The 40 foot height limit for buildings in R

districts is one of the most important preservation tools, and has encouraged the rehabilitation of most of the City's architecturally valuable housing and neighborhoods. In some historic neighborhoods, even stricter limits or demolition controls may be needed to prevent demolition of small-scale residences by the spread of speculative multi-unit housing. Special exceptions to height limits in Jackson Square are obsolete and should be eliminated.

The way in which zoning procedures of the Planning Code are used is crucial to the preservation of architectural resources and the prevention of excess economic pressures for demolition. The conditional use process has become the standard for the exercise of Planning Commission discretion over permits that would have an adverse impact on the environment, the neighborhood or the city, including those affecting historic resources. Except in the C-3 zoning districts (the Downtown) and designated historic districts, it is the only decision process to implement historic preservation policies. Because this process does not provide predictable or certain protection for historic resources, or standards for review, the extent of its use as a preservation review process should be limited. More specific standards and decision procedures are needed, and the delegation of some decisions to the Landmarks Board may be in order. More specific Master Plan policies for preservation could guide conditional use and variance decisions, including appeals. Limitations on appeals appear to favor property owners over public interest organizations and renters.

The regulation of signs as they affect historic buildings is difficult to do on a general basis, but with general Master Plan policies more specific sign guidelines and controls should be incorporated into historic or conservation district ordinances, and a process for review of signs on architecturally significant structures is needed.

THE LANDMARKS ORDINANCE - ARTICLE 10

Before the Downtown Plan was adopted, Article 10 had served as the City's principal preservation program since 1967. Compared to other major cities, San Francisco's landmarks law is very weak. Only about 180 landmarks and five historic districts have been designated between 1967 and 1986 - too few for a city as rich in architecture and history as San Francisco. In spite of the law's weak authority and the program's limited progress, no designated landmarks have been demolished and the historic districts remain largely intact.

Several problems should be addressed through changes in Article 10 or other codes. The City cannot deny demolition of landmarks, but it often denies landmark status to buildings threatened by new development. No long-range strategy or

priorities for the designation of landmarks exists. Decisions on alterations to landmarks or development in historic districts have not been guided by specific criteria, causing conflicts between recommendations of the Landmarks Board and those of the Department of City Planning. Zoning controls often encourage development on landmark sites. The preservation duties and responsibilities of the Landmarks Board and staff are unclear, and may overlap those of the Department of City Planning and the Planning Commission. The Landmarks Board and Department of City Planning are both understaffed, without a sufficient number of professionals in historic preservation to carry out their duties.

The City has several options to improve Article 10 or extend protection to historic resources through other mechanisms. It could: 1) strengthen Article 10 and make the landmarks process more specific, enforceable, and focused; 2) extend the stronger protection of Article 11 of the Downtown Plan to other sub-areas now being replanned and rezoned, while maintaining the landmarks advisory process for review of alterations and future designation of landmarks and districts outside of the larger downtown; 3) incorporate preservation policies and controls into new plans and zoning ordinances for sub-areas and design height, bulk, and density regulations to remove economic incentives for redevelopment; 4) establish more than one type of historic and conservation districts; 5) appoint more advisory or regulatory boards, sensitive to the special purposes of each district, to administer them; and 6) make incremental improvements to the existing system - especially the strength, specificity, and enforceability of the controls and the staffing and distribution of responsibility between the board, the department, and the commission. These options are not mutually exclusive, and could be combined in a number of different strategies. Alternative strategies based on these options are discussed in greater detail in this report, along with a recommended direction. This report defines specific parts of Article 10 that need to be improved, under the assumption that incremental changes are needed, notwithstanding whichever long-term strategy is selected.

Immediate improvements are needed in Article 10 and the landmarks process to: 1) clarify the duties of the Landmarks Board, including assuming some of the authority for approval of alterations; 2) clarify the legal status of various lists and surveys of structures worthy of preservation, including "structures of merit;" 3) clarify the rulemaking authority of the Landmarks Board and Planning Commission; 4) increase the staff support for the Landmarks Board and clarify who the staff is accountable to in matters of preservation policy; 5) specify the purposes and controls for landmark and historic district designation, including different types of districts, public policy for preservation or replacement of landmarks and contributory buildings in historic districts, and the conditions under which landmarks can be de-designated or district boundaries

changed; 6) add authority for the Planning Commission to deny demolition of landmarks or contributory buildings in historic districts; 7) reduce the redundancy of permit reviews and public hearings for landmark designation and certificates of appropriateness; 8) establish maximum time limits for final decisions on designation recommendations and hearing continuations; 9) prevent consideration of new development proposals on sites containing buildings under consideration as landmarks or historic districts; 10) adopt more specific standards and criteria for review of alterations to landmarks and replacement or new construction in historic districts, particularly in each historic district ordinance; 11) remove constraints to appeals of landmark decisions favoring property owner's interests; and 12) copy or reference some of the provisions of Article 11 to avoid "taking" challenges and demolition by neglect.

Each historic district ordinance adopted to date for Jackson Square, Webster Street, the Northeast Waterfront, Alamo Square, and Liberty Hill is very general and lacks specific criteria or standards suitable for making decisions on alterations, demolition or replacement, and new construction. The more detailed appendices for conservation districts in the Downtown Plan should serve as a reference for upgrading all of the historic district ordinances. Alternatively, ordinances from other jurisdictions could be used as references for upgrading historic district ordinances.

The Department of City Planning and the Landmarks Board need a more specific long-term strategy and priorities for the designation of new landmarks and historic districts. This should be balanced with other planning priorities and purposes, including any alternative preservation techniques available.

SUB-AREA PLANS

Several plans are being developed to bring the zoning of areas immediately surrounding the downtown into general conformance with the lower height and bulk limits of the new Downtown Plan. The preservation approach for each of these sub-area plans is different; they are not based on the Downtown Plan policies, controls, or methods of identifying many buildings for protection at one time, which is being viewed as a model for other cities. Some of the plans list specific buildings and districts of significance, along with guidelines for alterations; while others merely identify the address of important buildings, and recommend individual landmark or historic district designations under Article 10. Several plans propose to rely entirely on the conditional use process for implementing preservation policies. Most of the sub-area plans are more restrictive than prior zoning and have policies that complement historic preservation goals. Consideration should be given to

developing a consistent approach to historic preservation, based on the stronger controls in the Downtown Plan or a new Article 10 of the same general standards. The Conditional Use process should only serve as a temporary process for historic preservation until these plans can be strengthened by incorporating lists of buildings and standards for protection and control of alterations. If plans must be approved before they can be upgraded to the quality of the Downtown Plan, consideration should be given to designating lists of important buildings for protection as part of the plan approval ordinance, establishing strong standards and controls for demolition and alterations, along with a reconsideration process for building ratings similar to Section 1105 of the Downtown Plan ordinance.

This report does not critique all aspects of the Downtown Plan, because the time since its adoption has been too brief to evaluate its effectiveness. In general, the Downtown Plan is viewed by the preservation community in San Francisco, and nation-wide, as one of the strongest and most comprehensive approaches to historic preservation in a major city. However, this report identifies parts of the plan that need to be closely monitored because of potential problems they might create for the implementation of the preservation element.

These potential problems include the effects of the annual limit for new office space on preservation; the workability of the transfer of development rights (TDR) mechanism in light of the annual limit and the cap on maximum floor area ratios; the cumulative effects of exceptions to the 80 foot height limit in the Kearny-Market-Mason-Sutter conservation district and of the approval of replacement structures for contributory buildings; and the adequacy of the major-minor alterations decision process of the Zoning Administrator.

In general, the Downtown Plan presents a better model for preserving buildings in other sub-areas of the City being replanned than Article 10 in its current form.

The Chinatown Plan recommends a historic district and several landmark designations, along with reductions in height and bulk controls to provide long-needed protection for one of the nation's most important and unique cultural districts, but additional protection may be needed on Stockton Street and east of Kearny.

The Civic Center Plan of 1974 is completely out of date and provides little specific protection for existing buildings in a district that is on the National Register of Historic Places. The plan should be updated, and the district should be designated as a city historic district under an updated Article 10.

The Northeast Waterfront Plan includes policies for the preservation of the historic waterfront character, but provides inadequate protection or recognition of the National Register-eligible pier bulkhead buildings and other structures. Important buildings should be identified outside of the Northeast Waterfront Historic District and designated for protection under Article 10.

The North of Market residential special use district includes a purpose for historic preservation, reduces height limits, and provides a conditional use review for permits which must consider preservation. But there is no list of buildings or specific standards to control alterations or demolition.

The Rincon Hill Plan incorporates preservation objectives, policies, and guidelines for eight structures but the implementing ordinance does not include any preservation provisions. Conditional use review is the only mechanism to implement the policies. Height limits to encourage new housing could increase economic pressure to demolish existing architectural resources, unless more predictable preservation standards are provided.

The South of Market Plan proposal includes sections on "architectural character" and "landmark buildings" and recommends a historic district at Second and Townsend Streets along with several landmark designations. The overall conservation approach of the plan is complementary to historic preservation. However, the goals, policies, and principal features of the plan do not explicitly include historic preservation. Since this plan is to be implemented by changes to existing provisions of the Planning Code and through recommended designations under Article 10, more explicit policies would be appropriate. Changes to Article 10 are needed to ensure preservation if this is the principal mechanism for implementation.

The Van Ness Avenue Plan proposal includes a section on preservation of significant buildings and housing resources. These need to be converted to enforceable code language. Buildings other than those facing Van Ness Avenue should be protected by the plan. If Article 10 designations are to be the principal method of providing protection, the landmarks law needs to be upgraded to the general standard of Article 11. Alternatively, policies and controls similar to Article 11 could be adopted as part of the implementing ordinance for this plan, and a section similar to 1105 of the Downtown Plan ordinance could permit property owners to challenge the interim list of buildings to be protected.

OTHER CITIES

Each of the cities evaluated - New Orleans, New York, Boston, and Seattle - have their own unique preservation approach, but each is based on the model of a separate and independent landmarks board or historic district commission. The main lessons learned in this review that are applicable to San Francisco are that: 1) occasionally more than one landmarks board has been established to manage several historic districts, but a single board for the entire City is more typical; 2) more professional staff and larger budgets are needed to adequately manage a large city preservation program; 3) landmarks boards in other cities control alterations of landmarks, typically without City Council or Department of City Planning approval; 4) authority to deny demolition or alteration of landmarks or property in historic districts is common among large city preservation programs; 5) citywide architectural surveys are needed, in addition to more specific research of properties for designation as landmarks or historic districts; and 6) landmark programs that have frequent interaction with their planning departments have more integrated zoning for historic preservation.

ALTERNATIVE MANAGEMENT APPROACHES

Government organization for historic resource management can take several forms: 1) a strengthened Planning Commission and Department of City Planning preservation program, with specific standards limiting discretion; 2) a strengthened Landmarks Board with a limited focus on preservation; 3) an integrated Landmarks Board-Department of City Planning preservation program, with sharing of preservation responsibilities and a more comprehensive view maintained by incremental improvements in the existing Planning Code; 4) multiple historic district and landmark boards for different districts; or 5) a landmarks program which separates historic preservation from architectural or urban design conservation.

In this study, several assumptions are made about the existing political context for historic preservation in San Francisco, and about how the planning, zoning, and landmarks process works for or against historic preservation. Among these are the following: Preservation is considered very important by most San Franciscans, but it must be balanced with other values, such as affordable housing, to be successful. Conflicts occur over varying weights given to these values, but they should be resolved through planning rather than at the time permit applications are considered. Historic preservation is currently very popular, as it must be for a preservation element to be adopted and implemented. Implementing ordinances, including changes to the Planning Code and especially Article 10, are essential to implement a Master Plan element; the element itself

is not enough. Restrictive zoning in some areas of the City helps preserve significant architecture, but direct controls over demolition and alterations are also needed. There are many more historic resources than are now protected, but additional surveys are needed to determine where and how many to preserve. It is politically easier to protect groups of buildings at one time than to designate many buildings individually. Incremental changes in management systems are easier and faster to implement than sweeping changes. The capacity of the City to protect historic resources is directly limited by the financial and staff resources devoted to the task.

RECOMMENDATIONS

Recommendations for improvement of the historic preservation system for San Francisco are found throughout the report; the following are major changes that deserve consideration as part of the adoption and implementation of the Master Plan element.

1. The City should adopt a historic preservation element of the Master Plan, and should amend some existing policies to remove or modify policies that conflict with historic preservation.
2. An integrated Department of City Planning - Landmarks Board historic preservation program should be adopted, with a new preservation planning section of the department and additional staff.
3. Article 10 of the Planning Code should be amended to provide enhanced protection to landmarks and historic districts.
4. Standardized survey and evaluation procedures and criteria should be adopted by the Planning Commission and Landmarks Board.
5. Interim controls to protect threatened architectural and historic resources should be adopted by ordinance, until comprehensive surveys and official designations can be completed.
6. All pending sub-area plans and rezoning ordinances should be revised to incorporate historic preservation policies, controls, and lists of designated buildings for protection.
7. All existing historic district ordinances should be upgraded with more specific purposes, definitions, policies, and standards.
8. A new classification of conservation district should be added to the Planning Code, with broader, more flexible purposes and controls.

9. The City should survey publicly owned historic and architectural resources, and establish policies, standards, and procedures, and the financial resources to protect them.
10. Concentrations of significant architecture should be identified and protected through rezoning or district designation.
11. The City should commit financial and staff resources to the management of historic resources commensurate with the importance of such resources to the City.
12. Obsolete sections of the Planning Code that threaten historic resources should be removed.
13. Economic incentives for preservation and rehabilitation should be utilized and disincentives to the preservation of older buildings should be removed.
14. The City should facilitate public awareness and use of the State Historic Building Code.
15. The City should pursue Certified Local Government Program status for its revised historic preservation programs, if potential financial support for such programs is more than the cost of complying with federal and state standards.
16. Article 10 historic districts should be submitted to the State and the National Park Service for certification under the National Register. Owners of individual landmarks should be encouraged to nominate them to the National Register, and technical assistance should be provided.
17. The City should maintain and support the role of non-profit historic preservation organizations.

1. GENERAL DISCUSSION OF PRESERVATION ISSUES

The City of San Francisco has made great improvements in the management of historic and architectural resources in the past five years. Due in part to the broad citizen support for historic preservation expressed during the citizen campaigns to save the City of Paris department store and the Fitzhugh Building on Union Square, City officials have become more sensitive to the values of historic and architectural resources to the community than in past decades.

Support for historic preservation is only a part of a broader trend in favor of land use planning and environmental protection in the City. With the growth of strong neighborhood and environmental organizations, San Franciscans have become more aware of their architectural and cultural heritage, and have gained the political power and tools to protect their environment. This trend is evidenced by the large number of citizen initiatives that have been proposed over the past ten years, including some which have nearly passed and have influenced official actions of the elected representatives. Current support for historic preservation from the Mayor's office, the Board of Supervisors and the Department of City Planning is very high.

With the passage of the Downtown Plan, the City has protected more significant buildings than during the 18 years of the administration of Article 10 of the Planning Code, the City's landmarks ordinance. The plan protects 250 significant buildings, establishes six conservation districts, enacts the nation's most comprehensive transfer of development rights process, and establishes design guidelines and review procedures for controlling alterations to significant buildings and the quality of new development downtown. This plan has been recognized throughout the nation as one of the strongest and most comprehensive preservation programs in any city.

Also during the last five years, the Department of City Planning and Planning Commission, with the assistance of the Landmarks Preservation Advisory Board and non-profit historic and

neighborhood preservation organizations, have established three more historic districts and many new landmark designations. The department has incorporated preservation policies for buildings in the North of Market Residential Special Use District, the Rincon Hill Plan, the residence element of the Master Plan, and the neighborhood commercial rezoning ordinance. It has also proposed preservation policies for draft plans for Van Ness Avenue, South of Market, and Chinatown.

It is clear from this record that historic preservation has become a high priority and part of the mainstream of planning of the current administration. However, each of these preservation planning efforts has been carried out independently of the others, often with different survey and rating methodologies for the buildings to be protected, with different control mechanisms proposed, and without any overall policy framework or planning strategy to tie the disparate pieces together. If this ad hoc process of preservation planning continues, the City will have a patchwork of preservation policies and control mechanisms for each neighborhood or commercial district which could lead to confusion, conflicting decisions, and legal challenges that could jeopardize the entire system of management for historic resources.

This review is intended to address this situation by raising issues that will help focus the City's policymaking on the appropriate scope and management structure for San Francisco's historic and architectural resources. This will be accomplished by evaluating the existing Planning Code, sub-area plans, and historic districts and recommending alternative corrective actions that should help unify and rationalize the City's management framework for historic preservation. This evaluation is intended to serve as background for the preparation of a Master Plan element for historic preservation by Department of City Planning staff.

a. What is the appropriate scope of preservation in the Master Plan element?

Should preservation be limited to architecture, history, and archeology, or should the concept be expanded to address the natural environment, neighborhood values, economic diversity, and other urban amenities, e.g. signs, wall paintings, or flagpoles on buildings?

A historic preservation element cannot be all things to all people. It cannot maintain the status quo or protect every aspect of city life that people feel nostalgic about. Other elements of the Master Plan and city ordinances other than the Planning Code can be changed if it is appropriate to protect, for example, neighborhood convenience retail uses, to prevent rapid change of residential environments, or to protect remaining

natural features of the city. Certain historic physical features of a building or a neighborhood can and should be preserved when important by establishing specific descriptions and criteria in historic district ordinances. The need for protection of such features as historic signs, flagpoles, and streetlights can become policies of the Master Plan, and implemented through standards in ordinances for specific districts.

This study suggests that the preservation element should be narrowly focused on the preservation of significant architecture, historically significant buildings, sites, places, artifacts, archeological resources, and urban design features that are representative of the City's rich past. This limit is not meant to suggest that other aspects of the City's life and environment that characterize its past are not worthy of protection in other parts of the Master Plan or through other ordinances; only that the historic preservation element and implementing ordinances need to be clear and focused to be effective. For example, the neighborhood commercial rezoning ordinance and the residential hotel conversion and demolition ordinance both have a conservation thrust which is complementary to historic preservation goals, but it would be redundant and confusing for the historic preservation element to try to address the same goals of these other programs.

b. What is the value of historic preservation to San Francisco?

Can this value be described in functional and relative terms for the Master Plan, in a way that will give preservation a sense of priority among other Master Plan elements?

Based on various public opinion polls taken over the last few years, historic preservation is one of the most universally supported issues among San Francisco's citizens. This probably explains how the demolition of a single historic building can gain the opposition of nearly 60,000 petitioners, as in the campaign to save the City of Paris department store. Historic preservation is valuable to San Francisco for many reasons, some of which are intangible or immeasurable. Historic and architecturally important sites maintain the qualities of the historic city that attracts tourism (the City's primary industry), corporate relocations, and residents, and it also maintains property values and neighborhood identity. Therefore, it has enormous economic value to the City. For example, the top attractions for tourists to the City, according to surveys by the Visitors' and Convention Bureau, tend to be areas with concentrations of historic and architecturally valuable resources, a pattern which is verified by national surveys of visitor destinations. Economic efficiency also demands that many historic buildings be preserved for the continued utility of their spaces, materials, and structures, particularly when development controls do not permit higher density development on

the same sites. Historic resources are also important for the cultural identity and well-being of the civilization of this City and the nation. They are key ingredients in the diverse mix of physical and cultural characteristics that make San Francisco unique and loved as one of the world's most beautiful cities, and provide a quality that many other major cities in the nation have nearly lost through redevelopment.

It is important for the Master Plan to articulate and describe the values of historic preservation to the City, as a legal foundation for implementing ordinances and actions and to give a sense of priority among other Master Plan elements. However, it may be impossible to rank historic preservation in any definitive way with other values addressed in the Master Plan. Historic preservation must take a strong but balanced position alongside other values dear to San Francisco citizens, including affordable housing, quality schools, jobs for residents, a healthy tax base, efficient transportation, institutional services (police, fire, health, public safety), a clean and healthy environment, recreation, entertainment and the arts, and other aesthetic features of the City.

State law and the City's Master Plan and Planning Code clearly establish the authority for the protection of historic preservation values, even when private property rights or the fulfillment of other public goals are compromised. But the City must consider to what extent it should prevent growth and change to preserve existing historic resources.

One aspect of historic preservation may be different from other values addressed by the Master Plan. Significant architectural and historic resources are not renewable or recoverable once they are lost. Changes to the City that may produce jobs, affordable housing, or an increase in tax revenues in the short term may be at the permanent expense of the City's physical and cultural identity. There are usually other alternatives available for accomplishing these other Master Plan goals without causing detriment to historic or architectural resources.

In most circumstances historic preservation can be complementary to the accomplishment of other public values. For example, rehabilitation of older buildings can produce jobs, taxes, and affordable housing, while conserving environmental amenities. The challenge for the Master Plan preservation element is to increase the official public priority given to historic preservation, while providing direction on how these values can complement rather than compete with other established public priorities.

c. How specific and enforceable should the historic preservation policies and controls be?

Should there be very specific and binding standards that any administrative body would be able to administer with very narrow discretion; or should the standards leave broad discretion to a narrowly constituted Landmarks Board, made up of people knowledgeable in historic preservation matters with known views on how historic buildings should be treated?

Specific and enforceable policies, standards, and criteria for historic preservation would help preserve and manage historic resources, regardless of what agency or individuals administer them. Specific policies and standards lead to predictable public decisions and fewer conflicts between agencies when more than one agency is involved in the decisions. Specific and enforceable policies and standards also provide citizens and public interest organizations with an opportunity to challenge the consistency between public policies and public decisions, and thus minimize the effects of special interest political intervention in the decision process. Citizen faith in and support for governing agencies is largely dependent on government decisions being made objectively and impartially. The value of a historic or architectural resource to the community (or the nation) should not depend on who currently owns it, how the owner is represented before the Planning Commission, or how much political support the owner of the property can gain for alternative uses. While public agencies will always need to balance many public interests in approving or disapproving the redevelopment or reuse of property, clear and specific policies and standards can minimize the need to balance these priorities at the time of a permit application, rather than at the time when the rules for all permit applications are established. As such, clear policies and standards can save property owners time and money in applying for development permits and can provide a public vision of the future appearance of the City which is more predictable and acceptable. Rapidly changing or uncertain public policies for development and preservation encourage artificially inflated property values, gentrification, and deterioration of neighborhoods; whereas specific policies lead to a more stable and healthy market for economic development, rehabilitation, and the maintenance of valuable existing uses.

Due to the specialized nature of historic preservation, those reviewing applications to alter historic structures need to have sufficient technical training and experience. A special purpose Landmarks Board and professional staff will continue to be very important to the implementation of a preservation element and related legislation. Not all architects or planners have sensitivity to, technical training in, or knowledge of historical architectural styles or an ability to make sound decisions related to design changes which would maintain the integrity of

historic structures. Even with more specific policies and standards to narrow the parameters for such decisions, some aesthetic and technical decisions are best left to those trained in historic preservation or to those with specialized interest and experience, as represented in the Landmarks Board. Federal and state requirements for certification of local historic preservation programs, mandate specific professional requirements for historic preservation staff and commissions.

In order to be effective, the City's preservation programs should, therefore, establish both specific policies, standards, and criteria for selection and control of historic resources, and provide for an appropriate level of qualified professional judgment in the administration of such programs. In this regard, a certain amount of uncertainty and tension between the professional and non-professional decisionmakers, and between the specialized interests of the Landmarks Board and the broader interests of the Planning Commission and elected officials, is inevitable. Disagreement, emotional at times, often clarifies and refines public policies, leading to greater certainty and harmony in the long term. For example, the public disagreements and controversies over the inner-city freeway system in the 1960s, or the demolition of historic buildings in the late 1970s, have led to more specific and predictable public policies for such matters and long-term benefits to the City.

d. With specific zoning controls and Master Plan policies, is there a need for landmark or historic district designations?

If zoning controls for new development and conservation were tailored to the size and character of existing historic buildings, it is conceivable that historic and architectural resources could be adequately protected without special controls. For example, the citywide residential downzoning of most neighborhoods to a 40 foot height limit in the late 1970s has been one of the most effective measures to preserve existing neighborhoods, architecturally significant structures, and the City's existing character.

While important, controls for height, bulk, and density are insufficient to protect some architecturally valuable structures and historic sites from demolition, or to protect the integrity of such buildings from incompatible and destructive alterations. Pressures to modernize buildings to keep up with the most marketable architectural styles continue, even though there is an increasing appreciation of the value of older building features in the marketplace. Some buildings require upgrading to meet current seismic, fire safety, and accessibility codes. Changes in the appearance of historic buildings to meet these and other changing needs cannot be adequately reviewed or controlled without some form of design review that addresses the

relationship of the proposed changes to the aesthetic character of the existing structures and their surroundings.

Landmark designation also carries a special honorific significance important to visitors and the public for educational purposes. This significance is not normally associated with other planning and zoning controls.

e. Should historic preservation be integrated into planning, zoning, and permitting functions of the City, or maintained as a separate, special purpose program?

The traditional model for historic preservation in the United States has been a separate landmarks or historic district ordinance, administered by a separate and narrowly focused landmarks or historic district board or commission. This model has worked particularly well for the long-term protection of smaller historic cities, such as Charleston and Annapolis, and for historic enclaves in larger cities, like the Vieux Carre' in New Orleans. In other major cities, like New York and Seattle, this approach has been effective in saving many individual landmarks and historic districts, but has not protected the scale and character of the context for such resources. In these and other cities intense conflicts are created by the differences between restrictive landmarks controls and highly permissive new development controls, often resulting in litigation, facade-only preservation, or complete loss of the historic resource or its historic environment. In San Francisco, the separate landmarks ordinance and the Landmarks Preservation Advisory Board have been successful in preserving the landmarks and historic districts that have been designated, but these have been far too few in number for the City's size and architectural quality. The landmarks process has had almost no effect on the overall scale and historic compatibility of new development in the City, except for very limited areas like Jackson Square. Until the last two or three years, one could count on both hands the number of landmarks designated in the downtown, where most historic resources were threatened. This limited success may not be attributable to the separate nature of the process, but to the weak legal authority given to the ordinance and the board, and the limited staff resources provided for the landmarks process.

However, the Downtown Plan ordinance has now demonstrated the potential for an integration of historic preservation policies with comprehensive planning for new development, where height, bulk, density, and use controls are carefully tailored to minimize economic pressures on groups of historic resources. Under this plan there is a sharing of review responsibilities between the Planning Commission and Landmarks Board and their staffs, and strict controls on historic buildings are combined with economic incentives and disincentives for preservation.

The recommendations of this report will emphasize an approach integrating historic preservation with controls for new development and environmental protection.

f. How many architectural, historic, and cultural resources should be preserved?

Within reasonable limits of City resources, how can the City manage to preserve and control the appearance of all of the significant resources that deserve to be protected from demolition or insensitive alteration? It is clear that there are many valuable historic, architectural, and archeological resources in San Francisco that have not been surveyed, designated, or protected from demolition or incompatible alterations. Efforts to arbitrarily define an appropriate percentage of all structures or sites or a particular age or style of building that is by definition "historic" or "significant" would be ill advised, because of the complex nature of the factors to be considered in making such findings or definitions. However, highly specialized and legally defensible methodologies have been developed in Canada and this country for making these judgments, and these have been used extensively for survey and evaluation systems for the National Register of Historic Places, the California Register of Historic Sites, and here in San Francisco by the Foundation for San Francisco's Architectural Heritage, the Landmarks Board, and the Department of City Planning staff. These survey and evaluation systems have served as the basis for most of the designations of landmarks in the past few years, and for the ratings of buildings in the Downtown Plan.

Until historic, archeological, and architectural resources are systematically surveyed and evaluated, it is premature to answer the question of how many of such resources should be preserved. Even with sufficient information about the resources, the answer to this question will beg another question: "relative to what?" The priority that citizens place on historic preservation relative to other values will influence public policy on how many architectural and historic resources are enough to protect, particularly when alternative uses are proposed for the sites of such resources. These priorities tend to change over time with public attitudes about architectural styles, neighborhood character, economic development, and other issues.

It is not necessary to have a comprehensive inventory of all historic and architectural resources, to know that selected resources deserve protection. Surveys can take a very long time and many financial and staff resources to complete when done thoroughly for an area as large as San Francisco. Progress should be made on designating resources for protection when these

resources are threatened and when there is a strong city-wide or neighborhood interest in their protection.

Recommendations in this report will address the way in which the City can survey and evaluate its historic, archeological, and architectural resources, so that public decisionmakers can be provided with the best and most objective available information about such resources, in order to balance these values with others involved in planning and permitting development in the City. The assumption here is that with such information and more explicit policies for historic preservation in the Master Plan and related ordinances, the best of such resources will be protected for future generations.

g. What level of government involvement is appropriate for controlling alterations of historic and architecturally significant and contributory buildings?

The level of control over alterations might appropriately vary with the level of significance of the building, the significance of the building's contribution to its environment, or the purpose of its designation. If the government intervention into the alteration business is extensive, requiring more staff and board time, the number of resources that can be designated for protection will be limited. Therefore, the degree to which policies and design guidelines for alterations can be made specific and understandable to non-professional administrators reduces the need for special professional review and increases the capacity of the City to protect such resources.

In some areas the degree of control of architectural changes will need to be balanced with other purposes of preservation ordinances. For example, in at least one downtown conservation district (the Kearny-Market-Mason-Sutter District), part of the purpose of the district designation is to maintain the overall scale and character of the environment of the retail district and the ambience of the street life to protect the attractiveness of the area to shoppers; i.e., an economic purpose. To apply standards for alterations so strict as to inhibit the commercial purposes of shop fronts, signs, etc., would conflict with one of the primary purposes of this particular district and would be unacceptable to the City and the merchants. However, in other districts architectural integrity may be more important than other purposes of the district, justifying more restrictive standards.

The extent of government control over alterations of buildings should not be uniform for all protected buildings or districts. The most appropriate place to define the level of permissible alterations, and the level of public review of such controls, is in the ordinance for the type of building or historic district designation. These controls must be carefully

designed to carry out the purposes of the district or the particular designation classification.

h. To what extent should private property rights, and the property owner's own tastes and design preferences be sacrificed to those of the public?

As in the above discussion, the appropriate balance between public and private interests in the aesthetics or historical integrity of a property should probably be varied with the purpose and significance of the property, rather than being the same for all designated properties. For example, the public has more at stake if one of San Francisco's most historic or architecturally important buildings (e.g., Mission Dolores or the old Hibernia Bank) is lost or adversely altered to suit the private owner's tastes, than if a building of lesser significance is compromised to suit the needs of its owners. However, a system of varying controls for varying qualities of buildings could quickly become too complicated to administer or legally enforce. Therefore, some form of classification or ranking system for buildings is not only valuable for determining which and how many buildings to protect, but to define the level of public review and the standards for review that are appropriate to the level of significance of the buildings.

i. Should several types of district designations be developed, with different purposes and controls for each?

This study explored a wide range of potential districts that might be designated and protected, each with its own individualized definitions, purposes, standards, and criteria. Districts reviewed included neighborhood conservation districts, where neighborhood values in addition to architecture are to be preserved; downtown or commercial conservation districts, where valuable shopping or commercial environments are protected through design controls; environmental conservation districts, where a mix of manmade (architectural) and natural resources are protected; historic districts, where a specific period of historical significance provides the standard for controls; architectural conservation districts, where a particularly significant group of buildings of a particular style or special urban design characteristics is protected; and special historic use or theme districts, where unique uses or institutions have wide public appeal (e.g., historic restaurants, churches, hotels, homes of famous persons).

Due to the different purposes of each of these districts (which are now treated in the same manner in the Article 10 landmarks process, as if all purposes deserved protection as architectural landmarks), the standards and criteria for alteration of the physical structures should be tailored to the purposes of the type of district.

It would not be necessary to establish as many types of districts as evaluated above in order to clarify the purposes and decision criteria for district designations, but the City's current practice of designating widely varying districts with the same "generic" district ordinance leads to confusion and conflict. The analysis below suggests at least two different types of districts - with more attention to unique definitions, purposes, criteria and standards - to guide decisionmakers, property owners, and the public in each designating ordinance.

j. Should a standardized approach to building surveys, rating systems, and nomination and designation procedures for architectural and historical resources be adopted?

The City now utilizes many different architectural and historical surveys, each with their own data, survey forms, evaluation criteria, and ratings or findings of building significance, but only a few downtown surveys have any official status. With so many surveys, often with conflicting findings, the credibility and public acceptance of the results of all surveys are threatened. The evaluation below will suggest an approach to improving consistency, reliability, and completeness of architectural and historic surveys for the City.

2. LEGAL BACKGROUND

a. The role of the Master Plan

California law directs every local government to prepare and adopt a "comprehensive long-range general plan" to serve as the basis for all local land use decisions.¹ This law applies to counties, general law cities, and, to a lesser extent, charter cities. The intent of this requirement is to ensure that local planning, zoning ordinances, and other land use decisions are made within a broad, carefully conceived framework rather than through an ad hoc process. In San Francisco it is the function and duty of the City Planning Commission to adopt and maintain a general plan, called the City's "Master Plan", for the improvement and future development of the city and county.²

Every general plan is required to contain certain mandatory elements including land use, circulation, housing, conservation (of natural resources), open space, noise, and safety. Although state law does not require a specific historic preservation element in each local general plan, it allows local governments to include "non-mandatory" elements which, in the judgment of the legislative body, relate to the physical development of the county or city. Historic preservation is a fairly common non-mandatory element of general plans in California.³ In addition, many jurisdictions have integrated historic preservation into mandated elements -- typically land use, housing, or open space.

General plan law requires that the zoning and land use regulations of counties and general law cities be consistent with all elements of the general plan, both mandatory and non-mandatory. Although state law does not require it, most charter cities in California have adopted this requirement.

While the San Francisco charter prevents the Board of Supervisors from acting on ordinances and resolutions which deal with land use decisions until they are referred to the Department of City Planning and a report is rendered thereon regarding conformity of the matter involved to the City's Master Plan, there is no requirement in San Francisco that zoning and other

regulations be consistent with the City's Master Plan. This could be required by the adoption of an ordinance of the Board of Supervisors. The requirement could also be imposed by charter amendment.⁴

There is also a requirement for internal consistency among all general plan elements -- optional elements as well as those that are mandated. This consistency requirement applies to charter cities as well as counties and general law cities. The plan must comprise an integrated, internally consistent statement of policies. A preservation element should, therefore, be related to and interdependent with other elements of the Master Plan. This is extremely important since the strength of any one element will often depend on the supportive aspects of other plan elements.

The statute expressly authorizes local residents and property owners to bring legal actions in superior court to force compliance with consistency requirements. In all general law cities and in charter cities which require zoning to follow the Master Plan, the consistency mandate appears to extend beyond the enactment of zoning ordinances to such other land use decisions as subdivision approvals.⁵ Under current interpretations of the consistency requirement, a court could, for example, invalidate a local decision affecting historic resources on the grounds that it conflicted with the historic preservation element of the local general plan.

Consequently, this study will address not only the components of a proposed preservation element for the City's Master Plan, but will propose ways to make zoning more consistent and recommend adjustments to other Master Plan elements to reinforce the programs and policies of the preservation element. Implementation of the preservation element will then have behind it the direction of the entire general plan. But, as pointed out below, either an ordinance by the Board of Supervisors or a charter amendment will be required in San Francisco to legally require zoning ordinances and other land use decisions to be consistent with its Master Plan elements.

b. Relationship to preservation ordinances and other land use regulations

A preservation element in a general plan is not a substitute for a historic district or landmark ordinance, or other changes to the planning code to protect historic resources. We have also learned that a landmark ordinance, standing alone, is only a first step. The preservation element should provide a preservation framework for all local ordinances, planning, and zoning activities. The general plan element should guide the

decisions of local legislators or members of the landmarks board by establishing an approach to identifying the city's principal historic and architectural resources and setting goals and standards for their preservation, enhancement, and maintenance. It should also provide guidance to other city agencies as to which of their activities could directly or indirectly advance or hinder preservation goals.

Because local governments in California derive their power to regulate for preservation purposes from the broad zoning authority delegated by the state,⁶ they have a great deal of discretion in this area. State law gives California cities and counties the power to provide for and regulate places, buildings, structures, works of art, and other objects of historical or aesthetic interest or value. Permissible regulatory purposes include protection, enhancement, perpetuation, and use of these historical places. The government may also exercise reasonable and appropriate control over the use or appearance of neighboring properties. This latter provision has been interpreted broadly by California courts to include property within the neighborhood of historically significant areas and not merely the property immediately adjacent to the historic property.⁷

Serving as a blueprint for preservation regulations and activities throughout a locality, a historic preservation element can also help to insulate a local government from legal charges that it has acted arbitrarily or unreasonably in placing restrictions on a particular district or piece of property. As the United States Supreme Court pointed out in the famous Penn Central case:

In contrast to discriminatory zoning, which is the antithesis of land use control as part of some comprehensive plan, the New York City law embodies a comprehensive plan to preserve structures of historic or aesthetic interest wherever they may be found in the city.⁸

Therefore, if a local government can demonstrate that it has made preservation a part of its overall effort to foster and promote the general welfare and well-being of the community as a whole, it would appear that individual decisions concerning historic or cultural properties stand a much better chance of surviving judicial scrutiny.

Although the legal benefits of a comprehensive program are important, the practical benefits are even more compelling. An effective preservation program will give local government access to federal and state funding, regulatory mechanisms and incentives, and greater leverage over federal projects that affect historic properties. Moreover, it can also inject an

element of certainty into the local development regulatory process by fostering needed and compatible economic development.

c. Guidelines for developing a preservation element

In 1976, the State of California Office of Planning and Research, in consultation with appropriate public and private organizations concerned with historic preservation, developed and published Historic Preservation Element Guidelines.⁹ The only manual which has been published by the state to assist localities in preparing historic preservation elements for their general plans, these guidelines suggest that the element encompass the following basic goals:

1. fully identifying the cultural resources of the community;
2. adoption of a specific preservation program including a preservation ordinance, a preservation board to implement the program, and any other zoning mechanisms to promote preservation goals;
3. modifying all existing local regulations so that they are consistent with or complement the preservation element of the plan; and
4. creating public awareness of preservation through such means as exhibits, tours, and school programs.

Inclusion of a preservation element in the City's Master Plan is a method of incorporating sensitivity to historic, cultural, and environmental resources into the City's existing framework for decisionmaking. As the preservation blueprint for all City land use regulations and activities, the element should also recommend the utilization of tools and techniques available through state or federal laws to facilitate preservation.

In a March 1986 draft of a report for the California Office of Historic Preservation, entitled "Historic Preservation in California: A Handbook for Local Communities", consultants Les-Thomas Associates proposed revisions to the guidelines for historic preservation elements of general plans. In outline form, these include four basic sections:

1. Introduction on the benefits of having a historic preservation element, including cultural, economic, social and planning benefits,
2. Historic and architectural background of the community, including historic and architectural styles which define the

community, and a description of the results of architectural surveys,

3. Issues and concerns, outlining the problems and opportunities facing historic areas in the community which the element will address, and

4. Broad goals for protecting historic resources, with specific policies and programs for implementing these goals, including the following:

- historic and architectural inventories,
- adoption of a preservation ordinance and creating a historic board or commission,
- making sure that other planning programs and ordinances are complimentary to historic preservation goals and policies,
- directing future funding sources and loan programs to historic neighborhoods in need of revitalization,
- providing incentives to encourage preservation and revitalization, and
- developing ongoing programs for enhancing public appreciation of historic and architectural resources.

While these recommendations have not yet been adopted by the State Office of Historic Preservation, they provide more specific guidance applicable to the development of San Francisco's historic preservation element, and should be considered. Other parts of the report provide useful guidance for the development of comprehensive historic preservation programs.

d. The role of the City charter

The definitions, duties, and relationships between the Planning Commission, Mayor, Board of Supervisors, and Planning Director are described generally in the charter, but their specific responsibilities for historic preservation are defined in the Planning Code, particularly in Articles 10 and 11. Some changes to the makeup of the Planning Commission to encourage better communications between the Landmarks Board and the Commission, such as adding a member of the Landmarks Board or its staff as a member of the commission (in the same way as the City Architect or the Director of the Public Utilities Commission serve) may require a change of the charter.

If the Landmarks Board were given more direct authority for landmarks decisions, e.g. the establishment of a new Landmarks Commission with powers similar to the New York City Landmarks Commission, the charter would need to be changed, because of the

effect of such changes on the Planning Commission and other boards.

The powers of the Board of Permit Appeals are defined by the charter. If changes to the process of appeals are needed to improve historic preservation, the charter would need to be changed. However, more specific policy direction for decisions of the board might be adopted by ordinance of the Board of Supervisors, as was provided in several parts of the Downtown Plan ordinance (e.g. Sec. 321(b) and 1111.6). Therefore, more specific policy guidance from a Master Plan preservation element and standards incorporated into the Planning Code could help ensure that the Board of Permit Appeals will serve as an important step in saving architectural and historic resources.

3. EVALUATION OF OTHER MASTER PLAN ELEMENTS

a. General issues and findings

In light of the state legislation and guidelines for Master Plan elements, a number of issues have been explored in relationship to the proposed Master Plan element for historic preservation, including: 1. whether the existing policies and objectives of the Master Plan are specific enough to provide direction to the zoning ordinances and other development controls; 2. how effective the existing preservation policies of the Master Plan have been in protecting significant landmarks and historic districts, without a historic preservation element; 3. whether a new preservation element would be more effective; and 4. how to eliminate conflicts among Master Plan policies.

Upon consideration of these issues, and after discussions with several advisors to this study, it is believed that a preservation element of the City's Master Plan could make a considerable difference in the way the City's historic resources are managed, even though existing historic preservation policies in the urban design element have not been particularly effective in saving buildings to date. Several aspects of a preservation element and proposed implementation measures could make a difference, including: increasing the specificity of new policies, the implementation of which by way of enforceable ordinances could be upheld by third parties if necessary; changes in the procedures and distribution of the decision making powers of the Planning Commission and the Landmarks Board; and additional qualified staff to monitor and implement the Master Plan element and its implementation measures, as discussed in the recommendations of this report.

b. An evaluation of other Master Plan elements

The following is a review of the Master Plan elements that have some influence on the protection of architectural and

historic resources or neighborhoods where such resources are concentrated.

As indicated in the legal analysis above, the City of San Francisco, as a charter city, is exempt from the state requirement that zoning and other land use regulations must be consistent with the general plans, but state law that requires general plan elements to be internally consistent does apply to San Francisco. Therefore, this assessment of the existing Master Plan elements determined which existing policies could potentially be in conflict with policies of a new Master Plan element for historic preservation.

Implementation of the City's Master Plan inevitably involves the balancing of many public values. It is seldom possible for the Department of City Planning and Planning Commission to carry out one policy of the Master Plan to its maximum potential without compromising the full potential of another Master Plan policy. Many planning professionals would argue that planning for development, by its very nature, is a process of balancing and trading off public values expressed in policies of the Master Plan, and that is not possible to have complete harmony or consistency between policies of a Master Plan. For example, one of San Francisco's most highly valued Master Plan objectives is: "To provide new housing for all income groups in appropriate locations;" along with a policy to "Encourage development of housing on surplus, under-used and vacant public lands." Typically, in the City's attempts to carry out this objective and policy, neighborhood groups oppose new housing developments on surplus lands, using other objectives and policies of the Master Plan to support their arguments against additional density, higher traffic volumes, loss of open space, or loss of surplus architecturally or historically valuable buildings (e.g. Cogswell College, Gough School, and Polytechnic High School).

This evaluation recognizes that the balancing of competing public values will continue in both the establishment of Master Plan policies and in their implementation through ordinances, regulations, and case-by-case project decisions.

The following tables review existing objectives and policies of the Master Plan elements that have some influence on the protection of architectural and historic resources or on neighborhoods where such resources are concentrated. In general, the policies of all Master Plan elements support historic preservation. Due to the general nature of most policies, and the inherent "balance" that the Master Plan must achieve, internal conflicts may occur. In the new Master Plan element for historic preservation, and in changes to existing elements and implementing ordinances necessary to carry out the new

element, there is an opportunity to add qualifications or conditions to existing policies to minimize or avoid internal conflicts with historic preservation. In practice, the Department of City Planning and Planning Commission never apply a single Master Plan policy in isolation from the others; they review projects against all policies to ensure overall conformance to the Master Plan. Therefore, all of the Master Plan policies must be considered together rather than in isolation.

With this general caveat, Master Plan policies that are most likely to conflict with historic preservation include: 1. "encourage extension of... health and education services" (commerce); 2. "development of major open spaces on Embarcadero piers" and "create distinct openings in ... dominant streetwall form of the downtown" (recreation); 3. "encourage development of housing on surplus ... public lands" and "streamline the permit and environmental review process to expedite housing" (residence); 4. "seek ... new off-street facilities for freight ... for old buildings" (transportation); and 5. "promote ... visual transitions between new and older buildings" and "relate the height of buildings to the height ... of existing development" (urban design).

As an example, the last urban design policy cited may be perfectly appropriate to guide new infill development where historic structures or districts are not involved. However, it has been used in both zoning plans and case-by-case project review as a rationale for demolition of low-scale historic structures in order to encourage "transition" buildings between very large new buildings and a lower scale historic context. Examples include a proposal for Bush Street, near Powell, that would have blocked views of Timothy Pfleuger's Medical Dental Building on Sutter; 200 foot height limits in the draft Chinatown Plan for blocks north and south of the Holiday Inn on Kearny Street; and changes in the boundary of the first draft of the Downtown Plan's New Montgomery-Second Street conservation district boundary to allow a "transition building" at Second and Stevenson Street. Relatively minor changes to existing Master Plan policies might minimize conflicts with historic preservation. For example, this urban design policy could be altered to promote visual transitions between new and older buildings "except where such transitions would threaten existing historic or architecturally significant buildings, block views of important landmarks, or would be incompatible with the predominant scale of historic areas."

HISTORIC PRESERVATION RELATED POLICIES IN MASTER PLAN ELEMENTS: TABLE 1

Objectives and Policies that support historic preservation

Objectives & Policies that could conflict with historic preservation

Commerce & Industry

Obj. 1: Citywide:

Manage Economic Growth and Change to ensure enhancement of the total city living and working environment.

Policy 1: Encourage development which ... minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

Obj. 2: Business Vitality:

Policy 3: Maintain a favorable social and cultural climate in the City in order to enhance its attractiveness as a firm location.

Obj. 6: Downtown Office:

Policy 1: Encourage continued growth of prime downtown office activities so long as undesirable consequences of such growth can be avoided.

Policy 3: Assure that downtown development is compatible with the design and character of San Francisco. "...take steps to preserve those existing buildings of particular architectural merit".

Obj. 8: Neighborhood Commercial:

Policy 3: Protect environmental quality in neighborhood commercial areas. (Specific design guidelines included)

Obj. 9: Government, Health & Education Services:

Policy 2: Encourage the extension of needed health and educational services, but manage expansion to avoid or minimize disruption of adjacent residential areas.

Obj. 10: Visitor Trade:

Enhance San Francisco's position as a national center for conventions and visitor trade.

Policy 1: Guide the location of additional tourist related activities to minimize their adverse impacts on existing residential, commercial, and industrial activities.

Policy 2: Support locally initiated efforts to improve the visitor trade appeal of neighborhood commercial districts.

Policy 3: Assure that areas of particular visitor attraction are provided with adequate public services for both residents and visitors.

Obj. 6: Downtown:

Policy 2: Guide location of office development to maintain a compact downtown core so as to minimize displacement of other viable uses. (most important buildings are in the core).

Obj. 9: Gov't, Health & Education

Policy 2: Encourage the extension of needed health and educational services, but manage expansion to avoid or minimize disruption of adjacent residential areas.

HISTORIC PRESERVATION RELATED POLICIES IN MASTER PLAN ELEMENTS: TABLE 2

Objectives & Policies that support historic preservation

Objectives & Policies that could conflict with historic preservation

Community Safety

Obj. 2: Preservation:

Preserve, consistent with life safety considerations, the architectural character of buildings and structures important to the unique visual image of San Francisco.

Policy 1: Preserve the architectural design character of buildings and structures subject to requirement for abatement of hazards to life safety.

Obj. 4: Reconstruction:

Assure the sound and rational reconstruction of San Francisco following a major disaster.

Policy 1: Maintain the sound and rational development of San Francisco, following a major disaster, by rebuilding in accordance with established comprehensive plan objectives and policies, appropriate city codes, and other community concerns and needs.

Obj. 1. Life Safety:

Reduce hazards to life safety, minimize property damage and economic dislocations resulting from future earthquakes.

Policy 1: Apply a minimum level of acceptable risk to structures and uses of land based upon the nature of use, importance of the use to public safety and welfare, and density of occupancy.

Policy 2: Initiate orderly abatement of hazards from existing buildings and structures.

(Generally these policies, in combination with Obj. 2, present a reasonable and careful approach to seismic upgrading of existing buildings, consistent with preservation goals. Specific implementation measures, however, could threaten historic resources.)

HISTORIC PRESERVATION RELATED POLICIES IN MASTER PLAN ELEMENTS: TABLE 3

Objectives and Policies that support historic preservation

Objectives & policies that could conflict with historic preservation

Recreation and Open Space

Obj.2:San Francisco Shoreline:

Develop open spaces and recreation facilities which complement the urban character of the Northern Waterfront and Bay shoreline.

Policy 1: Require all new development within the shoreline zone to conform with shoreline land use provisions, ... and to meet urban design policies. "Meet the more specific design policies and principles in the urban design element and other components of the Master Plan."

Policy 3: Provide new public parks and recreational facilities along the shoreline.

Fort Mason: Preserve historic gardens and adapt historic buildings to community uses as current use is discontinued and structures are made available by the U.S. Army.

Alcatraz: Preserve historic structures and gardens and provide interpretive exhibits describing the island's cultural history.

Aquatic Park- Hyde St. Pier:

"..enhance the historic maritime character of the area. Provide space for and expand collection of historic vessels at the Hyde Street pier in a manner that will not impact continued use of the basin for swimming."

Ferry Plaza: Reinforce recreational use of the Ferry Building.. Remove the elevated Embarcadero Freeway and existing parking.

Policy 4: Preserve the open space, natural, historic, scenic and recreational features and values of the Presidio. Historic buildings should be preserved.

Obj. 3: Citywide System:

Develop and maintain a Diversified and balanced citywide system of high quality recreation facilities and open space.

Policy 3: Preserve solar access to public parks and open space.

Policy 9: Develop a Master Plan for Golden Gate Park. An inventory of existing structures and recognized landmarks should be compiled. The Plan should encourage restoration and reconstruction of landmarks and require that any modification or replacement of existing buildings be compatible with the landscape character and historic features of the park.

Obj. 2: S.F.Shoreline:

Policy 3: Provide new public parks and recreational facilities along the shoreline.

Piers 9-35: If and when all or a portion of the area between these piers and the Embarcadero is released from maritime use, emphasis should be given to development of major open spaces. (If demolition of bulkhead buildings is proposed for open space, conflicts would occur).

South Beach: Remove piers 42, 44, 46a and portions of pier 40, creating a sheltered small boat harbor that can accommodate 700 boats. (Removal of National Register eligible pier bulkhead buildings has created conflict with preservation)

HISTORIC PRESERVATION RELATED POLICIES IN MASTER PLAN ELEMENTS: TABLE 4

Objectives and Policies that support historic preservation

Objectives & policies that could conflict with historic preservation

Residence

Obj. 1: Supply of New Housing:

Provide new housing for all income groups in appropriate locations.

Policy 6: Discourage development of new housing in areas unsuitable for residential occupancy, or on sites containing existing housing worthy of retention. The city should discourage development of new housing .. on sites where the development would require demolition of an architecturally significant building, especially a designated landmark.; on sites where the development would require demolition of existing sound or rehabilitatable residential units.

Obj. 2: Housing density:

Increase substantially the supply of housing without overcrowding or adversely affecting the prevailing character of existing neighborhoods.

Policy 1: Set allowable densities in established residential areas at levels which will maintain neighborhood scale and character.

Obj. 3: Retain Existing Housing

Policy 1: Discourage demolition of existing housing.

Policy 3: Preserve existing stock of residential hotels.

Obj. 4. Housing Condition

Maintain and improve the physical condition of housing.

Policy 1: Assure that existing housing is maintained in decent, safe and sanitary condition.

Policy 3: Promote and support voluntary housing rehabilitation.

Policy 4: Preserve residential buildings of significant architectural merit. (detailed implementation measures provided in Implementation Programs & Activities)

Obj. 6: Neighborhood environment

Provide a quality living environment.

Policy 3: Minimize disruption caused by expansion of institutions into residential areas.

Policy 4: Promote development of well designed housing. (design guidelines provided: "relate the design of new housing to the general design character of surrounding buildings.")

Policy 5: Modify proposed developments which have substantial adverse environmental impacts or otherwise conflict with the Master Plan.

Obj. 1: Supply:

Policy 1: Encourage development of housing on surplus, under used and vacant public lands. (new housing on surplus school sites, has resulted in demolition of significant buildings, and threatens others, no priority is given to adaptive reuse of existing structures for housing.)

Obj. 2. Housing density

Policy 4: Adopt specific zoning districts which conform to a generalized residential land use plan. (check for compatibility between densities and concentrations of existing significant buildings)

Obj. 5: Affordability

Policy 9: Streamline the permit and environmental review process to expedite housing construction. (expedited review of new housing on surplus school sites can expedite demolition of significant architecture, in the absence of other preservation policies).

HISTORIC PRESERVATION RELATED POLICIES IN MASTER PLAN ELEMENTS: TABLE 5

Objectives and Policies that support historic preservation

Objectives & Policies that could conflict with historic preservation

Transportation

Obj. 2:

Use the transportation system as a means for guiding development and improving the environment.

Policy 4: Design and locate facilities to preserve the natural landscape and to protect views.

Downtown Transportation Plan

Obj. 1:

Maintain facilities to enhance the economic vitality of the downtown business & shopping environment.

Policy 3: Discourage the addition of new long-term parking in and around downtown...

Citywide Parking Plan

Obj. 1:

Ensure that the provision of new or enlarged parking facilities does not adversely affect the livability and desirability of the city and its various neighborhoods.

Policy 1: Assure that new or enlarged parking facilities meet need, locational, and design criteria. Provision of the facility does not result in the demolition of sound residential, commercial, and industrial buildings. The structure is in scale with existing structures in the area, and when located in commercial districts includes commercial frontage in order to avoid blank street level facades.

Policy 2: Discourage the proliferation of surface parking as an interim land use, particularly where sound residential, commercial, or industrial buildings would be demolished pending other development.

Obj. 4: Freight deliveries

Policy 1: Seek opportunities for new off-street facilities for freight loading and service vehicles for old buildings (such facilities could erode the integrity of historic buildings).

HISTORIC PRESERVATION RELATED POLICIES IN MASTER PLAN ELEMENTS: TABLE 6

Objectives and Policies that support historic preservation:

Objectives & Policies that could conflict with historic preservation:

Urban Design

Obj. 2:

Conservation of resources which provide a sense of nature, continuity with the past, and freedom from overcrowding.

Policy 4: Preserve notable landmarks and areas of historic, architectural, or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

Policy 5: Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

Policy 6: Respect the character of older development nearby in the design of new buildings.

Policy 7: Recognize and protect outstanding and unique areas that contribute in an extraordinary degree to San Francisco's visual form and character (Telegraph Hill, Russian Hill, Pacific Heights, Buena Vista, and Upper Market and Dolores Heights are featured).

Obj. 3:

Moderation of major new development to complement the city pattern, the resources to be conserved, and the neighborhood environment.

Policy 1: Promote harmony in the visual relationships and transitions between new and older buildings.

Policy 6: Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

Policy 8: Discourage accumulations and development of large properties, unless such development is carefully designed with respect to its impact upon the surrounding areas and upon the city.

Obj. 4:

Improvement of the Neighborhood environment to increase personal safety, comfort, pride and opportunity.

Policy 15: Protect the livability and character of residential properties from the intrusion of incompatible new buildings.

Obj. 3:

Policy 1: Promote harmony in the visual relationships and transitions between new and older buildings. (Older buildings have been threatened by new "transition buildings," and other transition buildings have been permitted to block views of older highrises. When this policy is used as a rationale to eliminate older buildings in order to create a transition in scale between old and new, it threatens historic resources.)

Policy 5: Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development. (This policy can also be used to rationalize removal of older smaller structures to allow new development where the predominant scale has been changed with several new buildings.)

4. EVALUATION OF THE PLANNING CODE

The Planning Code is the principal legal instrument for implementation of Master Plan objectives and policies. The following evaluation of existing provisions of the Planning Code is designed to identify language that could inhibit the implementation of historic preservation policies, or other provisions that support historic preservation. Other parts of the Planning Code that were adopted with the new Downtown Plan ordinance are evaluated in more detail in the chapter on special area plans.

a. General zoning provisions

Sec. 101: Purposes. The purpose of the Planning Code is to guide, control, and regulate future growth and development "in accordance with the Master Plan ..." This language provides consistency between the Planning Code and the Master Plan, including the preservation element, when adopted. Section 101(b) provides the principal purpose for preservation-related policies, other than those found in Articles 10 and 11. "To protect the character and stability of residential, commercial, and industrial areas within the City, and to promote the orderly and beneficial development of such areas" could be written more specifically to incorporate historic preservation of individual buildings and historic sites by inserting the words: "to protect and preserve the City's architectural and cultural heritage, ..." after the second "areas."

b. Art. 1.2: Dimensions, areas and open spaces

Sec. 124: Basic Floor Area Ratio. The Downtown Plan ordinance lowered all floor area ratios in the C-3 zoning districts, from a high of 14:1 to 9:1 in C-3-0, to a low of 7:1 to 5:1 in C-3-S. Now there are areas outside of the traditional core of the City that will permit floor area ratios as high or higher than the central core, such as the C-M districts (9:1). Higher limits in the Automobile Special Use District described in Section 124(a) of the code (10:1) are proposed to be reduced. These relatively

high density zoning districts could encourage development outside of the traditional downtown, which could threaten historic resources; so the C-M district should be considered for rezoning to avoid a major imbalance between proposals new development and preservation of significant buildings in this area.

Sec. 127: Transfer of permitted basic gross floor area (TDR).

The Downtown Plan ordinance revised this section to permit TDR only from designated landmark sites to adjacent lots and implemented a more extensive TDR system of the Downtown Plan. However, the revisions of the TDR system outside of the C-3 zoning district do not limit TDR transfers to lots occupied by other designated landmarks or architecturally significant buildings, as the Downtown Plan limits TDR's within C-3 zoning districts. The use of TDR transfers could be considered for non-adjacent sites in connection with implementation plans for the Van Ness Avenue, and C-M districts, if high floor area ratios continue to be permitted and there are sufficient receiving areas for such transferred rights.

Sec. 144, 145: Treatment of ground story and moderation of fronts of buildings in residential districts. These sections are designed to maintain the visual character and consistency of residential streets and to maintain the scale and character of existing street frontages. However, the height limits in residential districts tend to be more of an influence in the character of residential streets than the treatment of the ground floor. Revised height limits and demolition controls are now under consideration by the Department of City Planning and the Board of Supervisors to address changes in the residential character of certain neighborhoods.

c. Art. 1.5: Off-street parking and loading

Sec. 157: Conditional Use Criteria for Parking. The conditional use criteria for additional parking now provide that the Planning Commission shall consider: "The absence of potential detrimental effects of the proposed parking upon the surrounding area, especially through unnecessary demolition of sound structures..." This criterion could be used to block the demolition of architecturally significant structures for additional parking.

Sec. 161: Exemptions from off-street parking and loading requirements. These exemptions are provided for specific special use districts in recognition of small-scale development, congestion, and other planning goals of the areas. In historic or conservation districts, where off-street parking and loading might lead to incompatible parking lots, parking structures, or the demolition of compatible buildings to provide for the off-street loading requirements, special parking and loading

exemptions might be added to this section or the designating ordinance. For example, the ordinance designating a Chinatown historic district or a Telegraph Hill historic district might include such exemptions if needed to carry out the goals of the district.

d. Article 1.7: Compliance

Sec. 181 (e): Non-conforming uses, enlargements, alterations, and reconstruction. This section permits the demolition and reconstruction of unreinforced masonry structures to the same number of dwelling units, even if the number of units is higher than the existing code would allow, to encourage the seismic safety of the structures. In areas like North of Market, Nob Hill, Chinatown, and South of Market, where zoning densities and height limits have been reduced and where there is a high concentration of existing unreinforced masonry buildings, this section could create a major loophole in the more restrictive zoning codes. Unreinforced masonry buildings can be retrofitted for seismic safety at a costs much lower than demolition and new construction, thereby saving many architecturally significant buildings and hundreds of affordable housing units. This provision might also provide a loophole for current rent-controlled affordable housing structures, as well as those covered by the City's residential hotel demolition and conversion ordinance. This section of the Planning Code should be amended to prevent the demolition of affordable housing and architecturally significant residential buildings.

Sec. 185 (b): Continuance of other non-conforming uses. This section establishes a maximum period for non-conforming uses, based on the age of buildings and their construction type (e.g. Type 1 & 2, 50 years; Type 3, 40 years; and Type 4 & 5, 30 years). Unless considerations of architectural significance or environmental values of the structures are taken into account as a part of these non-conforming use decisions, this requirement for conversion of structures to conforming uses or "complete removal" could become a time bomb for architecturally significant non-conforming use buildings. This section should be amended to permit the Planning Commission to consider the architectural and environmental significance of the non-conforming use structures in granting variances to these properties, and should require that all procedures limiting demolition of architecturally significant buildings and landmarks be followed.

Sec. 188 (c): Non-complying structures. This section has the same potential for encouraging demolition of architecturally significant unreinforced masonry residential structures as those discussed in Section 181 (e) above. The same recommendations apply.

e. Article 2: Use districts

Sec. 206: Description and purpose of residential districts. The purposes (a) through (e) for residential zoning districts contain strong preservation policies for retaining architectural character, existing densities, and the encouragement of sound rehabilitation efforts. This language should already provide the authority for protective decisions of the Planning Commission, control of alterations, and for more staff work to document the architectural significance and character of existing residential neighborhoods. The Department of City Planning should reassess whether the pattern of existing residential districts adequately carries out these purposes. For example, are the concentrations of existing architecturally significant residential structures protected by residential zoning classifications? This analysis is now being done by the department staff, as part of the preservation element studies.

Sec. 238, 239: Nob Hill and Washington-Broadway special use districts. There are a large number of significant architectural resources in both of these special use districts. The purposes and the specific provisions of the districts do not address the need to preserve these structures or the existing scale and character of the districts. Consideration should be given to amending the purposes and policies of these districts to include historic preservation.

Sec. 240: Northern Waterfront special use districts. In spite of the large number of historic resources in these districts, the importance of these resources to the appearance of the districts, and the significant tourist attraction of the historic character of the districts, there is no mention of preservation of buildings or the scale and character of these districts in these sections of the code. There are stronger policies for historic preservation in the Northeastern Waterfront Plan, a part of the Comprehensive Plan, but these have not been reflected in the Planning Code special use district provisions, although the Master Plan policies must be considered by the Planning Commission. While the Northeast Waterfront historic district ordinance provides for the preservation of significant buildings in this limited part of the Northern Waterfront, there are many unprotected buildings beyond its boundaries, such as the bulkhead buildings along the Embarcadero, which are all eligible for the National Register of Historic Places. These buildings also define the historic character of San Francisco's waterfront. These provisions for the Northern Waterfront special use districts should be amended to include policies and provisions for historic preservation. The significant buildings in these special use districts should be surveyed, rated, and protected

through landmark designation or other means. The height and bulk limits for development in these areas should be reassessed to prevent a general increase in the prevailing height of the buildings in the districts, as appears to be happening in the Northeast Waterfront historic district and the area east of Jackson Square just south of Broadway.

f. Article 2.5: Height and bulk districts

Sec. 251: Height and bulk districts - purposes. While the purposes include "promotion of harmony in the visual relationships and transitions between new and older buildings", and "protection ... of important City resources and of the neighborhood environment," these purposes do not sufficiently express the need to use height and bulk limits to protect existing architecturally significant buildings and the scale and character of historic districts and neighborhoods. The Downtown Plan utilizes new height and bulk limits effectively for this purpose, so the purposes of this section should be amended to include the above additions.

Sec. 253: Review of buildings exceeding 40 feet in R districts. The 1978 40 foot height limit for residential districts, with conditional use review of all proposals over that height, is probably the most important law protecting the scale and character of San Francisco neighborhoods and their large concentrations of Victorian, Edwardian, and other architecturally valuable structures. It has removed most of the economic incentives to demolish existing historic structures (which also provide an affordable housing resource to the City), and provides a review process guided by specific policies to preserve the scale and character of existing residential neighborhoods. With such protection against higher density development, the architectural qualities of the older buildings have given them a premium value in the marketplace, thereby creating private incentives for the rehabilitation and upgrading of these structures and an extension of their useful lives. Standards used in review of conditional use applications to exceed 40 feet are discussed below, under the review of the conditional use process. There may be some residential districts where the as-of-right 40 foot height limit is not restrictive enough to protect the scale and character of existing historic residential environments or specific structures of high architectural value. Areas where neighborhood groups or historic preservation organizations are concerned with a rapid rate of demolition of existing structures (e.g. for higher density new apartment buildings) should be reassessed by the Department of City Planning to determine if rezoning or lower height limits are needed.

Sec. 263.1: Special exceptions to height limits - Jackson Square: This section permits heights up to 200 feet on the southern edge of Jackson Square. This special exemption should be eliminated in light of the overall lowering of height limits in the C-3-0 District in the Downtown Plan, the lack of suitable development sites on the southern edge of Jackson Square, the value of sunlight to the shopping streets of Jackson Square, and the poor relationship between newly developed medium-rise buildings and the predominant scale of older Jackson Square buildings. Washington Street serves as a useful boundary between the high-rise development of the Financial District and the low-rise historic scale of Jackson Square, particularly considering the limited overall size of the Jackson Square historic district.

g. Article 3: Zoning procedures

Sec. 303: Conditional Uses. The conditional use process has been relied upon to a great extent over the past several years to increase the Planning Commission's discretion over individual permits and development projects. There appears to have been a major shift from the more predictable zoning "as of right," with standards prescribed by the Planning Code, to the discretionary conditional use process, based on a case-by-case review of the merits of each project and affording the opportunity for interested parties to influence the outcome of the Planning Commission decisions through the environmental review and public hearing process. The conditional use process is required for proposals to build higher than 40 feet in residential districts, to build new structures in conservation districts of the downtown, for changes of use in the neighborhood commercial districts, or for replacing architecturally important buildings in proposed plans for South of Market, Van Ness Avenue, Rincon Hill, and other areas. The proliferation of conditional use requirements has dramatically increased the work load of the Planning Commission, extended the length of Planning Commission meetings, and made the process of obtaining permits for development more unpredictable. However, this discretionary conditional review provides the only protection for many architectural resources that are not designated landmarks, historic districts, or located within categories of protection in the Downtown Plan. For example, the historic preservation purposes of the North of Market residential special use district can only be carried out through the conditional use process until specific buildings are designated for landmark status or the area is designated as a historic district. The Planning Commission and staff may soon reach a limit to their capacity to process all of the new conditional use reviews, unless more predictable and "as of right" policies and standards are not incorporated into specific area plans that will address the public's concerns over new development. An alternative to the conditional use process

has been adopted in the Downtown Plan. Specific policies discouraging demolition of the best buildings, standards governing alterations to rated buildings, and a review process of the Landmarks Board and Department of City Planning staff should greatly diminish the work load of the Planning Commission on these matters. These changes should also make the preservation goals and the development opportunities of the downtown much more predictable than a conditional use process would have provided. Similar specific policies, tied to a specific list of protected buildings, should be examined as an alternative to the conditional use process for proposed plans for Van Ness Avenue, South of Market, and other areas.

The standards for determination of a conditional use are generally weighted in favor of the public's need, the compatibility of the project with its surroundings, and avoidance of adverse impact. However, these standards in their current form are not sufficiently related to the effect of a proposed use on architectural or historic resources if this process is to be used as a standard decision framework for historic preservation, as proposed in many sub-area plans. This section requires that such uses comply with the applicable provisions of the Planning Code and "not adversely affect the Master Plan," but this does not require that conditional use applications involving the demolition of architecturally or historically significant buildings be denied, or even that policies of the Master Plan be carried out in conditional use decisions. This section should be changed to require compliance with the applicable provisions of both the Planning Code and the Master Plan.

As a primary decisionmaking process for historic preservation, conditional use may be ineffective because of limitations on appeals to Planning Commission decisions. Appeals of conditional use decisions can be made to the Board of Supervisors, as limited by Section 308.1 of the Planning Code, only if the appeal is subscribed by the owners of at least 20 percent of the property affected by the conditional use, or those within 300 feet of the property. This typically limits the ability of public interest organizations, such as neighborhood groups, preservation groups, or affected non-owner residents to successfully appeal conditional use decisions. The Board of Supervisors cannot overturn a conditional use decision of the Planning Commission with less than a two-thirds vote of its members; and in the event that the board disapproves such a decision, the Board must prescribe such conditions as are in its opinion necessary to secure the objectives of the Planning Code. This implies that the board can change the conditions, but may not deny the conditional use application. These limitations, taken together, tend to favor the interests of property owners rather than preservation interests or citizens, particularly in

commercial districts where property owners are likely to be more concerned with increasing speculative property values than with the protection of historic or aesthetic qualities of the area. If the conditional use process were to become a primary process for controlling demolitions or alterations of historic buildings, additional decisionmaking criteria are needed to prescribe under what circumstances and conditions historic buildings can be demolished or altered. These could merely reference other criteria, such as those in the Downtown Plan or Article 10, for the most significant buildings, but additional standards would be needed for replacement of contributory buildings.

Sec. 303(g): Delegation of hearing. This section allows the City Planning Commission to delegate conditional use hearing responsibility to one or more of its members or to the Zoning Administrator. With the increased reliance on the conditional use process, this authority might present an alternative way to manage the work load of the commission. If a member of the Landmarks Board were made an ex officio member of the Planning Commission, as discussed below in the review of Article 10, the conditional use process might be used in lieu of the certificate of appropriateness process for broad classes of changes or alterations to historic buildings. These matters could then be heard by the Landmarks Board representative to the commission. This section could even be amended to allow the commission to delegate conditional use hearing responsibilities to the full Landmarks Board, where historic preservation is the only issue considered.

Sec. 304.5: Institutional Master Plans. Each medical and post-secondary educational institution was required to have an institutional Master Plan submitted by the end of 1976, following guidelines prescribed by the Planning Code. While Section 3(c)3(B) of these guidelines requires a description of the anticipated impact of any proposed development by the institution on the surrounding neighborhood, including the effect on the character and scale of development in the surrounding neighborhood, it does not require an identification of architecturally or historically significant resources that would be adversely affected. At least two institutional Master Plans have threatened historic resources over the past few years: Pacific Medical Center's expansion, which caused residents of the area to initiate a historic district designation for Webster Street, and the Mt. Zion Hospital's expansion plans in the Western Addition, which threatened the N. Gray Mortuary Building on Divisadero Street. If these institutions were required to survey and protect significant architectural resources as a part of the expansion plans, conflicts over individual projects might be avoided. This section of the Planning Code might be amended to require that any changes to institutional Master Plans, or

plans for new institutions include an inventory of architectural and historic resources and measures to avoid, preserve, or mitigate adverse effects on such resources.

Sec. 305: Variances. The granting of a variance can have either positive or negative effects on historic or architectural resources. For example, the granting of a parking variance could make the rehabilitation of an older building feasible, or could avoid the adverse impact of an attached parking structure on the appearance of an historic building. On the other hand, the granting of a variance to a new development that would cause the demolition of a historic structure could indirectly contribute to the destruction of the historic resource or adversely affect the appearance of a historic neighborhood. Variance decisions are limited by standards of the Planning Code in this section.

Two of these standards could relate to the protection of historic resources, particularly if a new preservation element of the Master Plan provided the policy direction for such decisions. Standard four states: "That the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity." Standard five states: "That the granting of such variance will be in harmony with the general purpose and intent of (the Planning Code) and will not adversely affect the Master Plan." In the absence of more specific Master Plan policies or a definition of how historic resources contribute to the public welfare, these standards provide little protection from variance decisions that could adversely affect historic resources. Such variance decisions of the Zoning Administrator are appealable only to the Board of Permit Appeals, where a four-fifths vote is required to overturn the Zoning Administrator's decision. However, in past cases involving historic preservation, the Board of Permit Appeals has shown a sensitivity to historic resources. For example, the Board of Permit Appeals recently granted an off-street parking variance that aided a historic rehabilitation project. In order to ensure the consistency of variance decisions with historic preservation policies, these policies need to be more specific in the Master Plan and Planning Code.

Sec. 308: Appeals. The ability to appeal zoning amendments, conditional use, or variance decisions of the Planning Commission or Zoning Administrator provides important checks and balances in the decisionmaking process for public interest organizations, citizens, and owners of affected property. It also provides for a form of oversight of the planning and zoning process by the elected officials who have responsibility for enacting the laws that the Planning Commission, Department of City Planning and the Landmarks Board administer. Because of the proportion of votes of the Board of Supervisors or the Board of Permit Appeals needed

to overturn a decision of the Planning Commission or Zoning Administrator, (typically two-thirds of the Board of Supervisors and four-fifths of the Board of Permit Appeals), there is a considerable burden of proof on the appellant to demonstrate that the initial decision was wrong. In the absence of specific standards or criteria for decisionmaking, this burden is even more difficult, leading to either politically motivated decisions or decisions based on measures of reasonableness or hardship in specific cases. The Planning Code describes only the administrative and legislative appeals processes, not the judicial process of appeal. Because of the difficult burden of proof, some appellants are discouraged from challenging the decisions of the Zoning Administrator or the Planning Commission on appeal. However, these steps must be exhausted before the courts can consider a judicial appeal.

Sec. 308.1: Right of appeal. The requirement that appeals of conditional use decisions be subscribed to by 20 percent of property owners affected by the decision unduly limits appeals by public interest organizations or non-owning residents affected by the decision, and therefore limits the utility of conditional use procedures for implementing historic preservation policies, as noted above.

Sec. 306.2: Appeals of variances and administrative actions. In cases where the Zoning Administrator grants a variance of less than 10 percent of a zoning requirement, public notice of the variance may be very limited. Appeals of these decisions must be made in writing within 10 days after the written variance decision by the Zoning Administrator. Without some form of notice that a variance decision has been made, it is nearly impossible for appellants to file such an appeal within these time limits.

Sec. 310: Zoning procedures not to apply to Article 10. This section exempts landmark decisions and certificate of appropriateness decisions from amendment, variance, conditional use, and appeals procedures of the code. Comments about the Article 10 appeals procedures are made in the review of Article 10 below.

h. Article 6: Signs.

Advertising or identification signs can have a major negative effect on the character of architecturally or historically significant buildings, but well-integrated signs have been, historically, an important part of the architecture of commercial buildings. On the one hand, the architectural integrity of many of San Francisco's finest commercial buildings along Market Street has been damaged by a "beautification"

program which caused the removal of highly detailed movie marquees and entrance and sidewalk canopies in the name of sign removal or simplification. On the other hand, many of the most significant buildings now protected by the Downtown Plan, or proposed to be protected in plans for Van Ness Avenue or South of Market, have large incompatible signs covering large parts of their facades or sitting on top of the structures. It is difficult to prescribe sign standards and criteria for historic buildings that could be applied in all cases. For example, general sign control criteria would typically prohibit large painted or lighted signs directly on the facades of architecturally valuable older buildings, yet designated landmarks such as the Oriental Warehouse and the Hills Brothers coffee plant have included such signs as a valuable part of the historic landmark. Many historic signs, revealed on the sides of older buildings when adjacent buildings are demolished, have gained cultural, historic, or aesthetic interest as important to the community as the building itself. In some cases, large painted signs on buildings adjacent to historic buildings have had a major negative impact on the historic environment of the older building, so regulation of signs directly on the historic property may not be sufficient to protect the environment of the important building.

This chapter of the Planning Code provides general and specific standards for signs, based on the use of the building or the zoning district the sign is erected in. There is no reference in this chapter to the architectural, historic, or environmental significance of structures that might be affected by the placement or design of signs. Section 1111.7 of the Downtown Plan ordinance provides additional controls and a review of the appropriateness of signs proposed for significant and contributory buildings and conservation districts designated by the Plan. Sections 1005(b), 1006.2, and 1006.7 provide for the review of signs as a part of the certificate of appropriateness process for Article 10 designated landmarks and historic districts, but do not prescribe standards for the review of such applications. Such standards are most appropriate in the ordinances designating historic districts, because of the need to control signs to maintain the existing character of the particular district. In some residential districts signs may be completely inappropriate, while in other commercial historic districts signs may be necessary and appropriate to the character of the district. The Planning Code should have some general provision requiring staff review of signs applied for on structures that are architecturally significant according to surveys adopted by the Planning Commission. The ordinances for each historic or conservation district should have a section with standards and criteria for signs, where permitted, and Article 10 should have general standards for signs on designated landmarks.

Sec. 604(c): This section allows signs painted or repainted directly on a door or window in a C or M district, or on a wall of a building in one of these districts not exceeding 100 square feet in area, without a permit. Such signs on a historic or architecturally significant building could greatly diminish the architectural character of the building and its surroundings. Some form of review of such signs should be required where architecturally valuable buildings are affected.

Sec. 608: Special Sign Districts. More restrictive standards for signs are provided for special areas near residential districts, schools, parks and recreation facilities, the Civic Center, freeways, and certain scenic streets such as Market Street. Jackson Square is the only designated historic district where special sign standards have been prepared, and these are subject to further definition and control as part of the certificate of appropriateness review.

The specific standards for signs in Article 6 of the Planning Code are "as-of-right" standards, except where special review is required in certain special districts. These general standards outside of the special districts could permit signs that could adversely affect many historically and architecturally significant properties and historic neighborhoods that have not yet been designated as landmarks or historic districts under Article 10, or as significant or contributory buildings or conservation districts in the Downtown Plan. A general exception to the "as-of-right" standards should be considered, requiring case-by-case design review of the compatibility of signs with architecturally significant buildings, when such buildings have been surveyed and identified by the Department of City Planning.

5. ARTICLE 10 THE LANDMARKS ORDINANCE

a. Problems with the present landmarks program

The following is a list of observations about the current landmarks program, drawn from conversations with members, former members, and staff of the Landmarks Board, preservation groups, individuals, firsthand observations of the consultants, and an examination of Article 10 and selected individual landmark and historic district ordinances. There is no particular significance to the order of presentation of the problems.

Too few landmarks are designated in relationship to the number of significant buildings and districts that are eligible. San Francisco has many more historic buildings and neighborhoods that qualify for landmark or historic district designation than have been designated under Article 10. In the 19 years since the ordinance was established, only about 180 individual landmarks and five historic districts have been established. In contrast to the ad hoc landmark designation process, the comprehensive planning process used in the Downtown Plan established 250 significant buildings with stronger protection than for designated landmarks, as well as 180 contributory buildings and six conservation districts. Many of the historic areas and individual buildings outside of the downtown are threatened by new development or insensitive alterations which would destroy their architectural character. Many of San Francisco's most famous architectural monuments outside of the downtown, such as the Fairmont Hotel, have no protection under Article 10.

The City cannot deny demolition of designated landmarks. Article 10 only permits the Planning Commission to delay a demolition permit for up to six months (180 days), and permits the Board of Supervisors

to extend this delay for another 180 days. Most major East Coast cities have landmarks ordinances that either prohibit demolition of designated landmarks by ordinance or permit the City to deny demolition on a case-by-case permit review. The Downtown Plan prohibits the demolition of 250 significant buildings, establishing for the first time the City's legal right to protect architecturally and historically significant buildings. The Planning Commission might be able to exercise its discretionary review powers and its authority under the California Environmental Quality Act to prohibit demolition, but the explicit limiting provisions of Article 10 weakens this authority.

The City has often denied landmark status to buildings threatened by new development proposals, regardless of the architectural qualities of the building. If a specific development proposal is applied for on the site of an eligible landmark, the Planning Commission and Board of Supervisors have been very reluctant in the past to consider the merits of the historic building alone in the process of designation. Under great pressure from business interests of the City and the project sponsors, city agencies have often given more weight to the economic benefits of the new development proposal than to the value of the historic resource, and have denied landmark designation. Examples include the Fitzhugh Building, Alaska Commercial Building, City of Paris, the One Sansome Street Anglo-California National Bank, and the Holbrook and the Maskey Buildings. The Landmarks Board and preservation groups have been more successful in obtaining the City's approval of landmark recommendations when no specific new development proposals are pending on the site, even when the property owner objects to the landmark designation.

Neither the Landmarks Board nor the Department of City Planning have a long-range strategy or priorities for designation of landmarks or historic districts. Except for the establishment of priorities for thematic groups of building types, e.g. flatiron buildings, hotels, historic restaurants; the designation of City landmarks appears to have been an ad hoc reactive process of designating buildings of interest to a particular board member, community group, or individual owner, rather than a systematic process designed to protect the most important buildings that are threatened with demolition or incompatible alterations. While the process has been responsive to threats to

individual landmark-quality buildings and to the initiative of neighborhood groups, the response has often come too late to save worthy buildings because of the reluctance of the City to interfere with new development proposals. The tendency of the Landmarks Board to respond primarily to individual preferences may have resulted in the designation of buildings of questionable historic or architectural merit or integrity, while some of the City's most important buildings remain unprotected, thus weakening the credibility of the designation process.

The recommendations of the Landmarks Board and the decisions of the Planning Commission have not been guided by specific design standards or criteria. The design standards and criteria of Article 10 for certificate of appropriateness permits are very general, open to broad and often conflicting interpretation by members of the Landmarks Board, Department of City Planning staff, and the Planning Commission. In the absence of more precise standards, recommendations of the Landmarks Board may easily be contradicted by the department staff and overruled by the Planning Commission, even though the board is expected to have the greatest expertise in architectural preservation and the history of San Francisco. To fill this void, the Landmarks Board recently adopted a resolution to use the Secretary of the Interior's Standards for Rehabilitation as the operating standards and criteria for Landmarks Board review. The designating ordinance for each historic district provides an opportunity for more specific design standards and criteria for alterations of buildings in historic districts and for development on non-contributory building sites in such districts. These ordinances have often failed to provide explicit standards; they merely describe the characteristics of the existing buildings in the district and call for general compatibility with this character. For example, since the designating ordinance for the Northeast Waterfront historic district was unclear on whether compatible buildings in the district are expected or required to be preserved, the Planning Commission overruled the recommendation of the board and permitted the demolition of one of these buildings. Their action was supported by The Foundation for San Francisco's Architectural Heritage for the same reasons. The City has been relying too much on a case-by-case process for review of alterations to landmarks and of new construction in historic districts, under

the general requirement for "compatibility." In matters as subjective as architectural design, compatibility may have many different meanings to the officials charged with the responsibility for making these judgments, so more precise guidelines for assessing compatibility are needed, as provided in the Downtown Plan Conservation District guidelines.

Planning and zoning controls in some areas are in conflict with landmark controls. The height, bulk, and use controls for sites of some designated landmarks permit and encourage redevelopment of such properties, leading to conflicts over proposed demolition of designated landmarks. When the landmark controls are weak, i.e. only permit the delay of demolition rather than prohibit it altogether, a property owner will be encouraged to demolish designated landmarks or buildings within historic districts if the zoning controls and the market encourage higher density development. Examples include the south boundary of Jackson Square, where the 200 foot height limit would permit development that could result in the destruction of several properties in the historic district.

The Landmark Board's duties and responsibilities are unclear, and may be redundant with those of the Department of City Planning and the Planning Commission. All planning and decisionmaking authority under Article 10 resides with the Department of City Planning and the Planning Commission. The Landmarks Board only advises the department and commission in the conduct of their duties. While the board members are required to have special expertise and interest in the area of history and architectural preservation, this special interest and expertise is often overruled by the department or commission in favor of other public or private interests. While Article 10 and 11 prescribe certain responsibilities for the Landmarks Board, the board also carries out other functions on behalf of the City, such as review of federal projects and expenditures that would adversely affect historic resources, pursuant to Section 106 of the National Historic Preservation Act; review and comment on National Register nominations; participation in preservation survey and planning work; and review of environmental impact reports affecting historic resources. In 1970 the Board of Supervisors passed Resolution 268-70 authorizing the Landmarks Board to represent the City in dealings with all appropriate agencies concerned with historic preservation,

including state and federal agencies. This authority should also be clarified in any changes to Article 10.

The Landmarks Board is understaffed, and the role and responsibility of the staff is poorly defined. In spite of the importance of historic preservation to the City's economy and residents, the work of the Landmarks Board has been severely limited by the size of its staff. Over the past five years the Department of City Planning's budget (which includes the Landmarks Board's) has grown substantially (from \$2.3 million in 1981-1982, to \$5.9 million in 1985-1986), but no additional staff have been provided to the Landmarks Board, even though the Downtown Plan has added many new responsibilities. However, some additional staff planners have been assigned project review, survey, and evaluation duties in connection with the plan and other sub-area plans involving historic preservation. The secretary of the Landmarks Board is accountable to both the Planning Director, who by law serves as the staff representative to the board, and to the Landmarks Board. When the Planning Director disagrees with recommendations of the Landmarks Board on preservation policy (e.g. whether a building should be designated, or whether an alteration should be approved), the Landmarks Board staff is put in a very awkward position, unable to fully represent the interests of the Board. With only one staff member, who shares his time with other duties of the department (e.g. zoning counter inquiries), the board is unable to consider or process as many landmark designations or historic district proposals as are eligible in the City. Nor is it able to participate fully in advanced planning, research, or guidance to citizen's groups for landmark or historic district designations. The new Downtown Plan has substantially increased the duties and responsibilities of the Landmarks Board for reviewing applications for change in ratings for significant and contributory buildings and reviewing major alterations to these buildings. These new responsibilities will be difficult for the board to manage in an efficient manner without additional staff. The Department of City Planning's Programs and Plans Division has developed a qualified group of preservation staff who have developed the preservation policies of the Downtown Plan along with those for other sub-area plans, but they are not permanently assigned to preservation planning. Additional preservation staff have had a positive influence on the department's sensitivity to historic preservation issues, and have

helped to integrate preservation into the mainstream of the City's planning policy. However, the duties and responsibilities of this staff need to be clarified with respect to those of the Landmarks Board in order to avoid overlap, competition, or voids in important areas and to establish accountability. They also need to be permanently assigned to preservation duties, rather than drawn off to help with non-preservation planning.

Recommendations of the Landmarks Board have conflicted with those of the Planning Department.

Since both the Landmarks Board and the Planning Director make recommendations to the Planning Commission regarding the designation of city landmarks and the approval or disapproval of certificates of appropriateness, conflicting interpretations of Article 10 standards often occur. Such conflicts among City agencies and officials are confusing to project applicants, lead to long-term strained relationships between the department and the Landmarks Board and staff, and could result in the demolition of valuable historic resources. Much of this conflict is due to the lack of precise standards and criteria for alterations of landmarks or for development within historic districts, but it is also due to the ad hoc way in which landmark designation is often proposed for sites of development proposals favored by the department staff, after the proposal has been reviewed for several months. In other cases, conflicts have occurred because the Landmarks Board and Department of City Planning view their responsibilities to the city differently- -one with a narrow purpose to preserve and protect the City's historic and architectural resources, the other to balance a broad range of public and private values, including economic development and historic preservation. While some conflicts are inevitable because of these different perspectives, others may be avoidable through improved communication and greater cooperation between the department and the board. Increased efforts by both groups to understand each other's point of view on development proposals affecting historic resources, particularly in the early stages of project review, could minimize the potential for future conflicts. For example, Department of City Planning staff have been known to suggest design solutions or offer staff support to project sponsors for developments that will adversely affect historic resources without informing the Landmarks Board that the projects are under review or consulting the board

for their views. In such cases where staff support is gained for a project prior to the Landmarks Board review, the sponsor tends to ignore the views of the board, expecting the Planning Commission to overrule the board's recommendation. The Landmarks Board has also been known to initiate designation of a historic building on a site which may be under consideration by the Department of City Planning (or other departments) for carrying out other valued public policies, such as the provision of affordable housing, without consulting the department staff. Some members of the Landmarks Board may believe that consideration of matters other than architecture or history is outside of the scope of their responsibility, and may be contrary to their duties, as prescribed by Article 10. Such a narrow focus, however, will inevitably lead to conflicts with other public interests, unless the relative value of historic preservation is described in the Master Plan and Planning Code in such detail that priorities can be determined in all cases of conflict. This level of specificity is unlikely to be achieved by a preservation element of the Master Plan.

b. Evaluation of provisions of Article 10

The following evaluation of existing sections of Article 10 are based on perceived shortcomings of the existing management system for landmark protection, the author's recommendations for a realignment of responsibilities for landmark protection and for historic preservation in general (from Chapter 11 of this report), and comparisons with Article 11 for the Downtown Plan and landmarks ordinances of other cities throughout the United States.

Sec. 1001: Purposes. The findings of Article 10 are mixed with its purposes. For legal clarity, these need to be separated and clearly identified. The purposes establish the scope of what landmarks are, and why they are important. The City should consider expanding this scope, to be consistent with the scope of the proposed preservation element of the Master Plan. As written, the purposes are not exclusively those of Article 10, but are generally similar to the purposes of the Master Plan and the Planning Code. The purposes should be expanded if this Article is to authorize new conservation districts, similar to those designated in the Downtown Plan. Each historic and conservation district ordinance and landmark designation should have its own more specific findings and purposes, in addition to incorporation of the general purposes of Article 10. For compliance with Section 1006.7, an applicant cannot measure whether a project or alteration is "appropriate for and

consistent with the effectuation of the purposes of this Article 10," without more specific definition of purposes.

Sec. 1002: Powers and duties. There are no powers and duties described for the Landmarks Preservation Advisory Board, other than to "advise the department and the Planning Commission on historical preservation matters." Many of the powers and duties of the Department of City Planning and City Planning Commission are, in practice, carried out by the Landmarks Board. These should be codified and assigned to either a new staff preservation unit of the department or to the Landmarks Board.

The Planning Commission may establish and maintain lists of structures and other features deserving official recognition, other than those designated as landmarks and historic districts, and take appropriate measures of recognition. In the past they have done this through special resolutions adopting lists of buildings deserving preservation in the report "Guiding Downtown Development," but they have not followed the procedures of Section 1011, which allows for identification of "Structures of Merit", or referred to this section in their resolutions. This responsibility needs to be clarified and procedures should be established to assure due process and an enforceable outcome to the special non-landmark procedures. As recommended below, the authority provided by this section or Section 1011 should be used by the Planning Commission to adopt the results of several existing architectural surveys, and to provide interim protection for rated buildings and environmental review of applications that would adversely affect them.

Article 11 of the Downtown Plan Ordinance established several new duties and responsibilities for the Landmarks Board. Revisions to Article 10 should incorporate these new responsibilities, either by reference or directly.

Sec. 1002 (a)2. Duties of the Planning Commission (or LPAB if amended). The Landmarks Board should take over the decision-making responsibility for applications for demolition and alterations of landmarks, subject to appeal to the Planning Commission. Because of its experience and special interest in historic preservation, the board is qualified to handle the many detailed issues involved in these applications.

Sec. 1002 (a)3. This responsibility is very general. The powers and duties should be spelled out more clearly to indicate the steps the Planning Commission or the Landmarks Board can take to encourage or bring about preservation (e.g. acquire easements, permit TDR, etc.). In Seattle, the package of regulatory controls and incentives for preservation is designed for each property as it is designated. Section 1006.6 provides some

clarification of what these steps might be, such as consultation with civic groups, recommendations for acquisition by public agencies, or moving structures; but such actions seem too limited to be effective in situations where a substantial increase in value of the landmark property could be gained by demolition of the landmark.

Sec. 1002 (a)4. The legal status and effect of a list of buildings maintained by the Planning Commission (or LPAB if amended) needs to be described here in Section 1011, or in a separate interim control ordinance adopting the results of existing architectural surveys, as discussed in the Recommendations. This legal authority then needs to be referred to in each resolution of the commission, when such a list is adopted.

Sec. 1002(b): Duties of the department and commission. These and other duties should be divided up between a new preservation section of the Department of City Planning, the Landmarks Board and its staff, and the Planning Commission in accordance with recommendations for an integrated preservation program discussed later in Chapters 10 and 11. The duties of the preservation planning staff and the landmarks staff need to be described in this Section or in 1003 (b), at least in conceptual terms. The City should define which duties belong with the Department of City Planning (e.g. the planning functions) and which belong to the Landmarks Board and its staff (e.g. the regulatory functions). For example, the preservation planning staff could survey, evaluate, and recommend designation of landmarks and districts to the board, who would in turn evaluate and recommend designations to the Planning Commission (the Planning Director would not screen the recommendations of the Board, it would work in reverse).

Sec. 1002 (b)6. Currently, only the department and the Planning Commission have the authority to "establish policies, rules, and regulations as they deem necessary to administer and enforce Article 10." While members of the Landmarks Board have suggested revisions to Article 10 to allow them to establish such rules and policies, they do not currently have this authority, unless Section 1003(c) could be interpreted to provide it. This section seems to address only procedural rules and regulations for "organization" and "procedures," not substantive policies or criteria. However, the board has frequently adopted policy statements by resolution that could have a major influence over its decisions, e.g. policies regarding facade-only preservation, designation priorities, or endorsements of the Secretary of the Interior's Standards for Rehabilitation. In some cases, these policies might come into conflict with policies adopted by the Planning Commission (under the authority of Section 1002(b)(6)),

or with specific legislated standards adopted by the Board of Supervisors (e.g. Section 1111.6 standards for Downtown Plan buildings, Section 1006.7 of Article 10, or the standards of the designating ordinance for a historic district). Since the board does not have authority under Article 10 to adopt policies or standards, any attempt by the board to enforce its own resolutions might be overturned by the commission or by the courts. However, since the current Landmarks Board is only advisory, their resolutions can only be considered as advisory to the Commission. If the Landmarks Board is delegated more decision-making authority under revisions to Article 10, as recommended in this report, their authority for adoption of substantive policies and standards should be clarified as a part of the amendments.

This section should also specify to what extent "substantive" policies and standards, e.g. design standards, can be adopted by the Planning Commission, Department of City Planning or Landmarks Board. The authority of this section appears to be limited to procedural rules. For example, if the department or commission should be permitted to adopt the Secretary of the Interior's standards or positions against facade-only preservation without action by the Board of Supervisors, this section should be revised to permit the adoption of substantive standards.

Sec. 1003: Landmarks Preservation Advisory Board. Under the preferred management approach recommended in chapter 11, this section should permit the duties and responsibilities of the Landmarks Board to be expanded to take over some duties of the Planning Commission and the Department of City Planning specified in the previous section. Other duties should be assigned to a new preservation section of the department (or to the Planning Director, who would establish such a section). If the duties and responsibilities of the board are to be expanded, involving more work and time, consideration should be given to financial compensation similar to the Planning Commission's. The Art Commission member of the board seldom attends any meetings, and does not seem to serve any purpose by being part of the Landmarks Board. It would be more effective if a member of the Planning Commission, or a senior policy member of the staff, served on the board, rather than a member of the Art Commission. When matters of concern to both the Landmarks Board and the Art Commission are involved in an application, such as modifications to the Civic Center, joint hearings could be authorized between the two groups. The responsibilities for review of National Register nominations, review of federal actions or federally assisted activities under Section 106 of the National Historic Preservation Act, and review of environmental effects on architectural, historical, and archeological resources pursuant

to the California Environmental Policy Act (CEQA), should be assigned to the Landmarks Board. These are duties which the board now carries out under the authorization of Board of Supervisor's Resolution 268-70, but which should be incorporated into changes to Article 10. Responsibility for advising the Bureau of Building Permits on the interpretation of the State Historic Building Code should also be assigned to the Board, now that it is mandatory in San Francisco (e.g. which buildings are historic, whether the UBC interpretation would damage the architectural fabric of the building, or when to encourage the alternative use of the SHBC).

Sec. 1003(a). Some appointees to the Landmarks Board should be specially qualified by reason of training or experience in historic architecture, as well as in the historic and cultural traditions of the City, since so much of the board's work involves review of proposed changes in the architectural design of landmarks. The National Park Service has adopted detailed standards and guidelines for selection and qualification of historic commissions (boards), for use in the Certified Local Government program and other federally sponsored preservation activities. A copy of these standards and guidelines are included in the Appendix, and should be consulted in any revisions to Article 10. Consideration should be given to expanding the membership of the Landmarks Board to eleven or thirteen members to ensure adequate representation of both professionals with special expertise and other citizen members.

Sec. 1003(b). This section should clarify the relationship between the Landmarks Board staff and the Department of City Planning preservation staff, particularly with regard to appointment of the senior staff member to the board, and their accountability or obligation to represent the policy opinions of the board.

Section 1004: Designation of landmarks and historic districts.

Sec. 1004 (a)2: This section should be extended to define a new category of conservation district, as discussed in the recommendations, together with a clarification of purposes, criteria, and management procedures for both historic and conservation districts.

Sec. 1004 (b): This section should require more than a description of the characteristics of the landmark or historic district which justify its designation, along with a description of the particular features that should be preserved. It should also require design criteria and standards to be developed to guide any future alteration of the landmark structures and any future new development on sites in historic districts. It should

either 1) require specific policies for whether, and under what conditions, contributory buildings in designated historic districts can be demolished and replaced with compatible new structures; or 2) establish these definitions and standards for all such districts. One of the most significant ongoing controversies about historic district regulation is whether all contributory buildings must be preserved (e.g. 150 Green Street in the Northeast Waterfront historic district). Public policy on this matter should be clarified in revisions to the ordinance.

Sec. 1004 (c): This section subjects properties designated as landmarks to the controls and standards set forth in Article 10, but the standards and controls set forth (in Section 1006.7) are too general and weak. It provides for further controls and standards to be imposed by the designating ordinance. For example, the designating ordinances for each historic district should define which buildings must be preserved, and under what conditions other buildings can be replaced with new construction. For consistency, these rules might need to be the same for all buildings of the same category of significance, like the policies in the Downtown Plan ordinance. If the board wants to adopt the Secretary of the Interior's Standards for some buildings, the designating ordinance for the landmark or historic district might be an appropriate place to establish the necessary legislative authority for these standards and the due process for property owners affected by the imposition of the standards. If this is done for buildings that are also Category I - IV buildings in the Downtown Plan ordinance, the designating ordinance should describe how conflicts between Section 1111.6 standards and the Secretary of the Interior's Standards are to be resolved. Many of the historic district ordinances lack specific standards for guiding alterations of contributory buildings or new development; they merely describe the characteristics of the district and require that new development conform to the general characteristics of the other buildings. With such general guidance, potential conflicts of interpretation of the standards between the Landmarks Board and Planning Commission or department staff will likely be resolved in favor of those with the most legal authority in the review process, i.e. the Planning Commission.

Sec. 1004 (d): Recision of a landmark designation should be limited to situations of changed circumstances, new information about the district or structure, or particular hardship to the property owner or the community (see standards of Section 1106 of the Downtown Plan). Initiation of such a recision should be limited to the Landmarks Board, Planning Commission and property owner, and require a two-thirds majority vote by the Board of Supervisors. Until Hoffman's Grill was proposed to be eliminated from Article 10, landmarks were never removed from the list, in

spite of major changes to the characteristics that made them valuable as landmarks. Others probably deserve to be removed, because of the degree of alteration of the landmark or its site, such as the two banking temples at Sacramento and Montgomery or the U.S. Mint and Subtreasury on Commercial Street.

Sec. 1004.1: Initiation of designation. This section should be changed to allow initiation of designation by "the application of any organization or group which has historic preservation stated as one of its goals in its by-laws or articles of incorporation, or by the application of at least fifty (50) registered voters of the City," in the same manner as (and to be consistent with) Article 11, Section 1106(a). There should be no owner consent for historic districts initiated by the Board of Supervisors, Planning Commission or Landmarks Board.

Sec. 1004.3: Hearing by the City Planning Commission. The timing of the Planning Commission hearing on a recommendation of the Landmarks Board has often been abused by many continuations of consideration of the landmark, until a project that would result in the demolition is approved by the Planning Department staff (e.g. the Maskey, Fitzhugh, and City of Paris buildings). In other cases (e.g. the Colombo Building), the Planning Director has not forwarded the recommendation of the Landmarks Board to the Planning Commission within 30 days from the period of referral. To avoid future cases where long delays or several continuations of Planning Commission consideration of landmark recommendations might be used to develop Planning Commission support for new development projects on sites recommended as landmarks, landmark recommendations should be deemed to be automatically forwarded for approval from the Planning Commission to the Board of Supervisors, if it is not considered within a specified period after the Landmarks Board recommendation, say 30 days.

Sec. 1004.3 (b): Time limitation. "The Planning Commission shall approve, disapprove, or modify the proposal within 90 days after the conclusion of the public hearing." If the Planning Commission or Department of City Planning wish to modify a proposed landmark or historic district designation, the Landmarks Board should be given the opportunity to review and comment on the proposed modifications before the Planning Commission approval. In cases where modifications are proposed, the 90 day limit of action might need to be extended. This 90 day approval period has been abused in the past, and has not been enforced in some cases, through the use of owner-requested continuances. This section might add specific maximum limits, including continuances.

Sec. 1004.4: Designation by Board of Supervisors. The Board of Supervisors must hold a public hearing on any proposal transmitted to them from the Planning Commission. This subjects the proponents and opponents of landmark designations or historic districts to three sets of public hearings, and involves substantial staff resources to prepare for each hearing. This process could be streamlined by allowing the Planning Commission to designate landmarks or districts, with "consent calendar" approval by the Board of Supervisors, except in cases of appeal from a Planning Commission denial of a landmark's recommendation.

Sec. 1004.5 (b). This section does not appear to authorize the Board of Supervisors to reject a positive recommendation of the Planning Commission for a designation of a landmark or historic district. However, they may modify and approve the designation by a majority vote, and thus change the size of a historic district (expand or contract). This authority should be clarified in amendments to Article 10.

Section 1005: Conformity and permits.

Sec. 1005(c). This section states that "any or all exterior changes visible from a public street or other public place shall require approval in accordance with the provisions of this Article 10, regardless of whether or not a City permit is required for such exterior changes." Minor changes to landmark or historic district property - like paint color, landscaping, light fixtures, door knobs, etc.- cannot be enforced effectively without a permit to trigger Landmarks Board review. If as many historic districts were designated as qualify in the City, the staff and the Landmarks Board would not have the time to monitor and permit all of these minor changes. This provision should be changed to require approval only of alterations that require permits, except in unique circumstances of a particularly sensitive historic district, for which special review and permit procedures could be established in the designating ordinance.

Sec. 1005 (d). Provisions related to unsafe or dangerous buildings (Section 1007) should be consistent with similar language in Article 11 (Section 1112.7). They should establish under what public safety conditions a landmark might be demolished, and what information must be provided to the department with an application for a demolition permit. They should set standards equivalent to those for Sections 1112.1 through 1112.7 and Section 1116 of the Downtown Plan. This or another section should also establish new provisions to control demolition by neglect, requiring adequate maintenance of the building and providing penalties and remedies for lack of maintenance structures, as in Section 1117 of the Downtown Plan ordinance.

Sec. 1005 (e)1: Rather than let the Bureau of Building Permits authorize permits for lawfully demolished landmarks, the Landmarks Board and Planning Department preservation staff should initiate de-designation of demolished landmarks, or clear the title of properties that have been removed from designated historic districts. Subsection (2) of this section, or the City's CEQA guidelines, should address whether significant alterations of very significant interiors is a major impact subject to CEQA review, whether or not interiors are controlled through Article 10.

Section 1006: Certificate of Appropriateness. City review of proposed alterations to or demolition of landmark-quality buildings is not limited to the certificate of appropriateness process of Article 10. The merits of new construction on the site of a historic building versus preservation of the existing building is often considered at the time the structure is proposed for landmark designation. In the views of the Landmarks Board and local preservation organizations, these types of decisions should only be made during the certificate of appropriateness process, not during the designation process. This question should be resolved in any amendments to Article 10.

Sec. 1006.1(c). The content of applications should conform to the policies, rules, and regulations of the Landmarks Board, if the board is given rulemaking powers. The content is now determined only by the policies, rules, and regulations of the Department of City Planning and the Planning Commission. This section should require a formal finding by the Landmarks Board staff that the application is complete, before any of the review periods for certificate of appropriateness are begun. In some cases, an environmental evaluation may be needed for such a finding.

Sec. 1006.2(a). All certificates of appropriateness are reviewed by the Department, with the advice of the Landmarks Board. If it is determined that the proposal would have a significant impact upon the landmark, the Planning Commission holds a public hearing after referral to and review by the Landmarks Board at the board's regularly scheduled meeting. The current practice is for all alterations proposals to be reviewed by the Landmarks Board in a public hearing, and subsequently reviewed again by the Planning Commission. These hearings are redundant and cause delays in permit processing. They create the potential for conflicts in interpretation of Article 10 standards between the Planning Commission and the Landmarks Board. The City should reconsider the need for Planning Commission review of all certificate of appropriateness applications. Alternatives to this process would provide quicker processing of applications and

full protection of the landmarks. Some of the alternatives would retain the full authority of the Planning Commission, others would delegate this authority to the Landmarks Board. Each of the alternatives suggested below should be supported with more explicit standards and criteria for reviewing alterations to landmarks and new development within historic districts.

1. Review of all certificate of appropriateness applications by the Planning Commission only on appeal from the Landmarks Board decisions, by the property owner, by other property owners, or neighborhood organizations within x feet of the landmark or within the historic district, by non-profit preservation organizations, or by the Planning Director.

2. Review of certificate of appropriateness applications for alterations by the Planning Commission only on appeal from the Landmarks Board, as above, but all applications for demolition or new construction would be reviewed by both the Planning Commission and the Landmarks Board.

3. Appeal of Landmarks Board decisions only to the Board of Permit Appeals for certificate of appropriateness applications for alterations. Appeals to the Planning Commission and Board of Supervisors for recommendations on landmark or historic district designations and for applications for demolition and new construction.

4. Definition of major and minor alterations of landmarks by revisions to Article 10 (similar to Article 11); determination of whether proposed alterations are major or minor by the Zoning Administrator or Planning Director; and referral of applications for both major and minor alterations to the Landmarks Board for hearings and decisions. The Planning Commission would only review appeals of Landmarks Board decisions on major alterations, made by the property owner, by other property owners or neighborhood organizations within x feet of the property, by non-profit preservation organizations, or by the Planning Director.

5. Appeal of Landmark Board decisions on certificate of appropriateness applications only when a finding is made by the Planning Director (or commission) that a decision appears to violate the intent or specific policies of the Master Plan, Article 10 or 11 of the Planning Code, the ordinance designating a specific

landmark or historic district, or, in the opinion of the City Attorney, appears to be arbitrary, capricious, or may involve the City in a taking of private property without compensation. Such findings should be supported by a report of the Planning Director, City Attorney, or Planning Commission documenting the above.

6. Strengthen design review standards and the architectural history qualifications and sensitivity of the Planning Department's design review staff, to enable this staff to review and comment on all certificate of appropriateness applications and to report directly to the Planning Commission for decisions through the Director; eliminate the practice of certificate of appropriateness review hearings by the Landmarks Board, except upon appeal by the property owner, or by non-profit preservation or neighborhood organizations. This Landmarks Board review, upon appeal, would only be advisory to the commission, in order to confirm or challenge the recommendation of the professional staff. With this alternative, it would be appropriate to require that at least one member of the Planning Commission have special expertise or knowledge in architectural and historic preservation, or to change the make-up of the Commission to include a representative of the Landmarks Board.

Based on the recommended changes in the management system for historic preservation described below, alternatives 1, 2, or 4 are recommended for further consideration.

Sec. 1006.3: Scheduling and notice of hearing. These provisions should be consistent with those of Article 11, requiring notice to any group or individual who requests such notice in writing.

Sec. 1006.4: Referral to advisory board. This procedure could change if one of the alternatives to redundant public hearings outlined above is adopted.

Sec. 1006.5: Conduct of (Planning Commission) hearing - Decision. These provisions could change if one of the alternatives above is adopted.

Sec. 1006.5 (c): Continuations. These should be limited to a maximum number to prevent the Planning Commission from using the continuation process to review and informally approve alternative new development proposed for a landmark site, rather than to act on the recommendation of the Landmarks Board or staff.

Sec. 1006.5 (d): Decision. The Planning Commission should be required to hold a public hearing on the proposal within a specified time after the Landmarks Board recommendation, in addition to the requirement to render a decision 30 days after the public hearing. Appeal of certificate of appropriateness decisions of the Planning Commission (or Landmarks Board if Article 10 is changed) to the Board of Supervisors seems to involve more delay in the permit process, while unduly politicizing this decision. These appeals should be to the Board of Permit Appeals rather than to the Board of Supervisors. Only major certificate of appropriateness decisions, such as demolition permits or new construction in historic districts, should be appealable to the Board of Supervisors. The Board of Supervisors now has the authority to de-designate a City landmark. If it is in the City's best interests to allow a landmark to be demolished, procedures to de-designate the landmark should be used prior to demolition, rather than allow demolition on appeal of a certificate of appropriateness.

Sec. 1006.6: Nature of Planning Commission decision.

Sec. 1006.6 (a). Applications for construction or alteration of a structure should allow conditional approval of applications.

Sec. 1006.6 (b). This section should prohibit the demolition of designated landmarks or individually significant buildings in designated historic districts, in the same manner as the Downtown Plan prohibits the demolition of Category I buildings, except under very limited circumstances of hardship or public safety. Such new anti-demolition authority would have to provide owners of existing Landmark property with notice and an opportunity to challenge the new controls. At a minimum, the Planning Commission should be given the authority to approve an application (under limited circumstances defined by the ordinance), suspend action on the application for a limited period, or deny any application for demolition of a landmark. This section might also establish conditions under which the City would require the preservation of compatible buildings in a designated historic district, or would permit the demolition of such buildings and their replacement with compatible new structures. The standards and criteria for preservation or replacement of compatible buildings in historic districts might also be left to the individual ordinance for each historic district, if this section provides the authorization for such standards for all districts. Retroactive adjustments for existing historic district ordinances would need to be addressed if such changes are made.

Sec. 1006.7: Standards for review of applications. This section establishes the only standards for review of applications for

certificates of appropriateness, except for those found in the individual ordinances for each historic district. Therefore, other standards used by the Landmarks Board (such as the Secretary of Interior's standards, adopted by resolution of the board) have questionable legal status, and may result in the invalidation of any City decisions which rely on them. If more specific standards are appropriate for the review of city landmark alterations, they should be incorporated into this section by ordinance or by reference. The section applies the standards of this section to the Planning Commission, the Department of City Planning and the Landmarks Board, but does not bind the Board of Supervisors to the standards. Since the Board of Supervisors may make decisions on certificate of appropriateness applications on appeal from the Planning Commission pursuant to Section 1006.5(d), this section should also apply to any decisions on appeal to the Board of Supervisors.

These standards are very general and open to widely varying interpretations by the Landmarks Board, by the Department of City Planning, or the Commission, or, on appeal, by the Board of Supervisors or the courts. They should be made more specific for each type of decision requested under a certificate of appropriateness:

- demolition of a Landmark,
- demolition of a compatible building in a designated historic district,
- alteration of a designated landmark,
- alteration of a compatible building in a historic district,
- new construction on a landmark site,
- an addition to a landmark or compatible building in a historic district, and
- new construction on a non-compatible building site or vacant site in a historic district.

Each type of application for a certificate of appropriateness might be defined in terms of major or minor alterations, with different types of procedures or standards for each. Standards approximating the specificity of the Secretary of the Interior's standards, or the standards for alterations of significant or contributory Buildings of the Downtown Plan

ordinance (Section 1111.6), should be considered for this section.

In addition, the City should begin preparing and distributing case reports on how the standards are interpreted on a case-by-case basis, to improve the consistency of the City's response to such applications, to improve the predictability of the landmarks review process, and to minimize the potential for special interest political intervention into the landmark decision process. The Technical Briefs and the report "Interpreting the Secretary of the Interior's Standards" from the U. S. Department of the Interior should be consulted for examples of interpretative case studies.

However, more specific standards and interpretive case examples will never make the certificate of appropriateness review automatic or eliminate the need for individual judgment on each application, because each landmark building and its historic context is usually unique. But, without more specific standards and more consistent interpretation thereof, conflicts between individuals and agencies who must interpret Article 10 will continue, historic resources will continue to be lost, and unnecessary amounts of time and money will be spent by property owners and applicants trying to predict the outcome of the process.

Sec. 1006.8: Appeals from Planning Commission decision. As suggested above, this section should be revised to eliminate appeals to the Board of Supervisors, at least for alteration decisions. Appeals should be restricted to those that would permit demolition of landmarks or the construction of new buildings in historic districts. Alteration decisions should be appealable only to the Board of Permit Appeals. If appeals of all certificate of appropriateness decisions of the Planning Commission continue to go to the Board of Supervisors, the board should be bound by the standards of Article 10 as discussed above, and these standards should become more specific.

Sec. 1006.8 (b): Notice of appeal. The requirement that an appeal of a certificate of appropriateness decision within a historic district needs to be subscribed by owners of at least 20 percent of the property affected by the proposed certificate of appropriateness favors the interests of property owners and business interests over the interests of the preservation community or the citizens of the City who have an interest in historic preservation or the particular historic district. If the intent is to prohibit frivolous appeals, a minimum fee could be charged for the appeal, or a minimum number of signatures could be required of registered City voters (not just nearby property owners). Non-profit preservation organizations, the

Landmarks Board, and incorporated neighborhood organizations in the affected district should be permitted to appeal such decisions of the Planning Commission to the Board of Supervisors, if appeals are permitted by any parties. This section should be consistent with similar appeals provisions of Article 11 for protected downtown buildings.

Sec. 1007: Unsafe or dangerous conditions. This section should be reviewed for consistency with similar provisions of Article 11. A new provision might be added to this section for the reconstruction of buildings damaged by fire or other natural calamity or to allow development on the site of the damaged building no greater than the size of the damaged building, such reconstruction to be reviewed by the Landmarks Board and Planning Commission for compliance with the guidelines and standards of the historic district. This would discourage arson or demolition by neglect which might otherwise be rewarded by the ability to reconstruct a larger building.

Sec. 1011: Recognition of structures of merit. This section of Article 10 has not been used effectively since the Landmarks Board and Planning Department proposed its use in 1979 as a way of authorizing adoption of the inventory of significant buildings in the downtown identified in Splendid Survivors. Public hearings on the proposed list of structures of merit drew large numbers of property owners and business interests opposed to the formal listing of the structures, leading the Planning Commission to adopt the lists by resolution under its discretionary powers, rather than as "Structures of Merit." In any revisions of Article 10 the intent of this section should be clarified, and the legal effect of such designations by the Planning Commission should be established. Subsection (b) should either be deleted or substituted with specific regulations or controls (e.g. use of the list for CEQA review, to authorize discretionary or conditional use review of building permit applications affecting such structures). This provision adds another classification of architecturally important buildings to several other types of building classification systems (e.g. landmarks, category I-IV buildings in Article 11, Heritage A-D buildings, 1976 DCP survey ratings 1-5, National Register Buildings, etc.), with no additional protection for the structures so identified. If this section is retained and given legal meaning by adding regulations or controls for such structures of merit, a designation process might need to be added providing for notice, hearings, and other due process to affected owners of such structures.

Sec. 1012: Filing fees and provision for exemption. The Department of City Planning is now developing a revised fee schedule for all permit applications. These fees might be revised in relationship to the overall fee structure, to provide

sufficient financial support to expand the staff of the Landmarks Board and the preservation planning staff of the department, as well as to cover other costs related to the increased responsibilities of City administration of an expanded preservation program. Existing exemptions for non-profit organizations should be continued. These exemptions should apply to unincorporated neighborhood groups who wish to propose landmark designation or historic districts, even if such groups do not have IRS 501(c)(3) status (e.g. Nob Hill Neighbors, Victorian Alliance, Liberty Hill neighborhood residents). Care must be taken in establishing a fee schedule for alteration permits for designated landmarks or development in historic districts, so that the fees are not so high as to inhibit property owner support for designations or the rehabilitation of landmark structures. The fees should reflect the administrative costs of processing the applications.

Sec. 1013: Enforcement and penalties. These penalties should be consistent with Section 1114 of the Downtown Plan ordinance for unlawful alteration or demolition of significant or contributory buildings, to minimize the economic rewards for unlawful alteration or demolition.

Sec. 1014: Applicability. The 180 day hold on processing of permits for construction, alteration, or demolition of structures that are subject to a pending landmark designation should not be automatic. Applications conforming to the purposes, intent, and general standards of Article 10 should be permitted to proceed during the consideration of the designation, if reviewed under the procedures of Article 10. This 180 day hold should be extended whenever the Planning Commission or Board of Supervisors grants continuations of public hearings or otherwise extends the period of time that a landmark designation is under review. Alternatively, the Planning Commission or Board of Supervisors should not be permitted to grant continuations for the review of landmark or historic district designations, unless the affected property owner agrees to extend this maximum holding period. Subsection (b) should be changed to conform to similar provisions in Article 11 defining "vested rights" for projects approved prior to the designation of a landmark or historic district, which are consistent with California law and court interpretations of such rights.

Sec. 1015: Severability. Either this section or a new section should establish the relationship between the standards and controls of Articles 10 and 11, consistent with Section 1120 of Article 11.

c. Evaluation of the standards of historic district ordinances.

The following is a comparative evaluation of the provisions of each historic district designated or pending under Article 10, to determine whether the purposes, descriptions, standards, and criteria need to be improved. As indicated in the statement of problems above, different interpretations of the requirements for the historic districts have led to conflicts between the Landmarks Board, the Department of City Planning, and the Planning Commission during the review and approval of alterations and demolition permit applications. In addition to these comments, the ordinances for each historic district should be compared to those for successful historic districts of other cities, such as New York, New Orleans, Baltimore, Seattle, Charleston, Annapolis and Savannah. However, suggestions for changes in the existing ordinances for historic districts should be balanced with other priorities, based on whether there is a substantial threat to the architectural and historic resources of the district. This threat should be compared to threats to non-designated landmark-quality buildings or districts, along with an assessment of whether the City can, in the short term, control alterations and new development in existing districts sufficiently with the broad discretion that Article 10 and each historic district ordinance provides. Each of the historic districts should also be submitted to the State Office of Historic Preservation and the National Park Service for certification under the existing certified ordinance, so that property owners in the districts can claim the tax incentives for historic rehabilitation projects and for easement donations, as discussed below. This review would also help the City determine the adequacy of existing boundaries of the districts, and whether changes are needed to make the local boundaries conform to National Register criteria. However, local historic district boundary designations may serve important local or neighborhood purposes, other than those served by the National Register listing, so the boundaries should not be required to conform to National Register criteria in all instances.

Jackson Square historic district

Sec. 1: Findings and purposes. Ideally, the findings and purposes of the ordinance should be separated. There does not appear to be any direct tie between descriptions of history, nature of the area, architectural character, visual and functional unity and the statement of purpose. For example, there is no mention of period of significance in the purposes and whether or not it is a purpose of the ordinance to maintain the original physical remains of this period, or to promote a type and style of architecture that represents this period.

Sec. 3: Location and Boundaries. The boundaries of Jackson Square need to be reexamined because of the close relationship of buildings outside of the boundary to those in the district, and because of the major economic pressures on this part of the downtown. For example, the southwest side of Columbus Avenue between Pacific and Washington Streets, the area east of Sansome Street to McArthur Park, and the properties on the south side of Broadway should be examined. Depending on a clearer statement of purpose for the district, these areas might conform to the history, nature, architectural character, and visual and functional unity described in Section 5 of the ordinance. An examination of how the boundaries of the Jackson Square historic district compare with the boundaries of the National Register historic district should guide whether the boundaries meet national criteria. However, care should be taken in this examination to avoid potential political threats to the size of the existing district (i.e. would the redesignation process result in a smaller district rather than a larger one?). The boundary description for the district provides no clear technical description of how the boundary was established or how properties within the district are different than those outside of the district, as would be required for a National Register historic district.

Sec. 5: Justification. If this ordinance is revised, this section would be appropriate as part of the findings. Many of the descriptive statements of this section are very general and imprecise. Since this description and the features described in Section 6 serve as a substitute for design standards and criteria governing alterations of existing buildings, more precise description is warranted. For example, Section (d) states that the area includes "the City's only surviving early commercial area." What age is considered "early"? Does the large concentration of early twentieth century commercial buildings in the Financial or Retail districts or Chinatown not qualify under this description? This section should include a period of significance, and either this section or another should include a specific list of structures, by age and significance, for which standards and criteria for alterations can be related. The characteristics that make this district unique and different from the structures or areas immediately surrounding it could be clarified to support the boundary definition.

Sec. 6: Features. This section is useful for describing the characteristics of existing structures that are to be preserved in any proposed alteration work, but may not provide sufficient guidance or control over new construction on the sites of incompatible buildings or vacant lots.

Sec. 7: Additional provisions for Certificates of Appropriateness. While these guidelines provide some degree of direction for alterations and new development in the district, they are not written as mandatory requirements. If they are written only as advisory guidelines, and the Landmarks Board is only advisory to the Planning Commission with no direct authority to require adherence to the guidelines in appropriate circumstances, the guidelines might not be carried out by the Planning Commission. For example, the language of the guidelines in Section 7 (b) ("facade line continuity is desirable" or "... setbacks and arcades ... should be carefully considered") is so general and ambiguous as to lead to conflicts in interpretation between the various reviewing officials. It is questionable whether such permissive guidance could be enforced in court, if challenged by a property owner.

Sec. 7 (d): Demolition of non-landmarks. Compatible and incompatible buildings in Jackson Square are determined, at the request of the property owner, on a case-by-case basis, unless the building is an individually designated landmark. In cases of findings of incompatibility, the ordinance permits the building's demolition. This level of uncertainty creates unnecessary economic and political pressures for demolition of buildings in Jackson Square. The ordinance should have been based on a specific survey and findings of significance and compatibility for each property in the district at the time the ordinance was adopted. If in the 14 year period of administration of this ordinance the Department of City Planning has not yet determined findings of compatibility or incompatibility for all structures in Jackson Square, the Landmarks Board, in cooperation with the department and non-profit preservation organizations, should complete such findings and should recommend amendments to the Jackson Square historic district to codify the ratings for all the property. This section should also be amended to include explicit policies requiring preservation of compatible buildings, along with others describing the circumstances under which incompatible buildings can be demolished. These should be similar to the policies for significant and contributory buildings in the Downtown Plan. The provisions of this section limiting the authority of the Planning Commission to only suspend permits for demolition should be deleted. Potentially compatible buildings might also be identified, along with policies and conditions for upgrading the significance or replacement of such buildings.

Several new structures have been permitted and constructed in the Jackson Square historic district under the Article 10 review process and criteria. The Landmarks Board and the Department of City Planning's preservation planning staff should conduct a critical assessment of the compatibility of these new

developments with the scale and character of the district, including the effectiveness of the current design standards and controls for the district. Such an evaluation would probably determine that the current 65 foot height limit, the lack of maximum lot size regulations, the general nature of the standards and criteria, and the unpredictable nature of the review process have resulted in buildings that are substantially larger than the basic nature and architectural character of the district, as described in Section 5 (b) and (c). For example, most of these new developments are substantially larger than the vast majority of existing buildings under 40 feet, and cover much larger land parcels than most existing older buildings. Some buildings have used brick colors and ornamentation in ways that conflict with the prevailing colors and ornamentation of the district. If there are few development sites remaining in Jackson Square that would benefit from such a retrospective evaluation and code revision, an analysis of the effects of the Jackson Square historic district regulations would provide valuable guidance for the design and drafting of future historic districts under Article 10.

The City should consider the development of more restrictive height controls (e.g. 40 feet, with 65 feet as a conditional use) for new development in Jackson Square, the adoption of more specific controls for additions above existing compatible buildings, and more explicit binding controls for alterations to historic buildings similar to the Secretary of the Interior's Standards for Rehabilitation, the standards in Section 1111.6, or those for the conservation districts of the Downtown Plan.

Section 263 of the Planning Code, allowing special exceptions to the 65 foot height limit up to 200 feet, should be eliminated, considering the effects of the Pacific Lumber Company building height, the overall reduction of height limits in the C-3-0 districts, and the few remaining developable sites in the Jackson Square area that could accommodate higher density development without destroying the character of the district.

Standards for new construction in the district should define more explicitly whether new construction should follow the styles of the period of significance, or whether the new buildings should be of contemporary design, consistent with the height, bulk, materials, window patterns, or other features of the buildings of the significant period. Under the existing controls some new buildings are using imitative Victorian details, whereas others are using contemporary styles in brick or imitative brick surface materials, neither of which are completely consistent with the 1850s and 1860s architecture around which the district was formed.

The Webster Street historic district

The Webster Street historic district is a very harmonious group of Victorian houses in a two block section of Washington Street, between Clay and Jackson Streets, adjacent to the Pacific Medical Center. Threats to historic residences from expansion of the medical center prompted the neighborhood residents to initiate the designation in 1980. The ordinance designating the district (no. 166-81) is all of three pages, with an attached resolution of the Planning Commission incorporated by reference. This resolution, in turn, incorporates by reference the resolution of the Landmarks Board recommending the district. The structures included in this district are similar in period, style, and architectural and historical significance to many Victorian residential neighborhoods in San Francisco. A comparative evaluation of this district with other neighborhoods would demonstrate that the City should be designating many more historic districts than are currently protected by Article 10. This is also a good example of the role that Article 10 can serve as a planning and regulatory mechanism for citizen groups who are interested in protecting their historic neighborhoods from expansive institutional or commercial development.

Sec. 1: Findings and Purposes. These are very general, drawing only on the findings and purposes of Article 10. This ordinance is so lacking in specificity that it might be called the "generic" historic district ordinance. All specificity for the district is contained in the Landmarks Board case report, which is not made a part of the ordinance by any of the references, and therefore has questionable legal status. The second paragraph of the "resolved" section of the landmarks resolution includes the following description:

a) the special character or special historical, architectural, or aesthetic interest or value which justify its designation as a historic district are described and depicted in the case report, photographs, data sheets on individual structures, and other materials on file in the Department of City Planning Docket No. HD 75.1; and

b) the particular features existing as of this date which should be preserved are those shown on the said photographs and in said case report and data on individual structures ..."

It might be argued that this paragraph incorporates the case report into the Landmarks Board resolution, which is incorporated in the Planning Commission resolution, which is, in turn, incorporated into the ordinance designating the district. If so,

these references might provide legislative authority to utilize the case report in the review of certificates of appropriateness for the district. However, this link to the detail in the case report is very indirect, and may not provide sufficient guidance to property owners, the Landmarks Board, or the Planning Commission to guide decisions for alterations in the district.

The Landmarks Board and Planning Department should consider amending the ordinance for this district to incorporate more detailed findings, purposes, and design standards based on the Case Report.

Sec. 3: Location and boundaries. The current boundary of this district might be reassessed for its appropriateness, considering the changes in the area (e.g. expansion of the Medical Center), the similarities of contiguous properties, or the need for detailed design review of new development or alterations to existing structures surrounding the existing historic district. If the Department develops more specific and more consistent standards for historic district designations, the boundaries of this district should be reexamined.

Sec. 4: Relation to City Planning Code. The designating ordinance indicates that it does not supersede, impair, or modify any City Planning Code provisions applicable to the property, including those controlling uses, height, bulk, lot coverage, floor area ratio, open space, parking, and signs. If there is any aspect of these zoning controls that might conflict with the purposes of the district to protect the scale, character, and existing compatible structures of the district, this ordinance should supersede these provisions, by specifically providing more restrictive controls and indicating that any conflict between the zoning ordinance and the historic district ordinance will be controlled by the more restrictive of the two.

Sec. 5 and 6: Justification and features. These sections should incorporate the statement of significance, quality ratings, and architecture and history descriptions of the case report, either in the ordinance or by reference to the case report. The address of each contributing structure should be listed, and a definition of contributing and non-contributing structures should be added to the ordinance. Data sheets for each individual property are provided as an attachment to the case report, providing the necessary information to support such a listing for contributing and non-contributing buildings; but because of the tenuous relationship between the ordinance and this information, the information may not have sufficient legal status if challenged in a court test of the ordinance.

Sec. 7: Additional provisions. The existing uniform architectural style, age, height, bulk, and details of the existing property in the district provide an excellent baseline for design standards for alterations and for new development, if any development could be accommodated. However, the ordinance does not explicitly direct alterations or new development in the district to replicate the existing architectural styles or details, so additional design standards would provide greater clarity for the public review officials and property owners. Design standards and criteria for each type of property (contributing or non-contributing) should be added to this section of the ordinance. More specific design criteria might be drawn from the Planning Department's 1979 brochure "Residential Design Guidelines for New Buildings in Older Neighborhoods" and from the Secretary of the Interior's standards for rehabilitation.

The sub-section on demolition extends the control over demolition of structures in the district as much as the existing controls of Article 10 permit, but it does not distinguish between contributing and non-contributing structures. It indicates that any replacement must conform with the general profile of the district, but this profile is not described in the ordinance other than through references to the photographs attached to the case report, which have questionable legal status. This section should conform to recommended changes in Article 10 suggested above, either precluding demolition of contributory buildings in historic districts or authorizing the Planning Commission to approve or deny demolition under more specific policies controlling such decisions. This historic district ordinance should determine which buildings should not be demolished, and which, if any, can be replaced with compatible new development.

Northeast Waterfront historic district

This historic district was established in 1983, after it was initiated by the Landmarks Preservation Advisory Board and researched and drafted by volunteer staff. It differs from other districts in that it has no specific period of significance. Instead, it "contains commercial warehouse buildings from nearly every decade of San Francisco's history"(Section 5). (This is probably an exaggeration, because it would have to contain buildings representing each of nearly 13 decades). With such a broad period of significance, this district has been more difficult to administer than other historic districts because architects have had difficulty determining how to maintain consistency with buildings of different periods and styles. There have also been differences of interpretation of the purposes and design standards of the district between the

Landmarks Board, the Planning Department and Commission, and local non-profit historic preservation organizations, leading to substantial conflict and confusion over how new development in the district should be permitted and designed.

Sec.1: Findings and purposes. This section merely includes standard provisions copied from Article 10 and the Jackson Square historic district ordinance and does not provide any description or clarification of the more specific findings or purposes of this particular district, which the standards and criteria for controlling demolition or alteration to structures are designed to carry out. For example, if the district is designed to protect a representative sample of warehouse-type structures from each important period in San Francisco's history of waterfront-related development, it should say so and refer to a specific list of those warehouse structures considered to be important for this purpose in other parts of the ordinance. If it is only for the preservation of the scale and character of a geographic area, in which a representative mix of historic warehouse structures exists, including all existing structures that contribute to this scale and character, the findings and purposes should clearly state this fact and indicate how the design standards and criteria are to carry out this purpose. Much of the confusion or conflicts over the development in this district is due to the imprecise findings and purposes of the ordinance and the differences in the interpretation of these purposes and standards by different officials in the review process.

Sec. 4: Relation to the City Planning Code. It is apparent, given the experience of administration of this district, that the height, bulk, and other controls of the City Planning Code for this area may be inconsistent or in conflict with the purposes of the historic district. There has been substantial public controversy, along with several cases of conflicts between the Planning Commission, the Landmarks Board, and various neighborhood and preservation groups, over development proposals in this district since it was established. This section should include more specific controls over height, bulk, and other aspects of development than the Planning Code now provides. Whenever the historic district ordinance conflicts with the controls of the Planning Code, the more restrictive should prevail. For example, the description of the scale and proportion of the district (Sec. 6) indicates that building height is generally within a six story range, with higher structures closer to Telegraph Hill and lower buildings near the water, but neither the Planning Code nor the controls of this ordinance reflect this variation in height limits.

A new section should be added after this section defining contributing and non-contributing structures (and any other

categories of significance), along with statements of policy for whether, and under what conditions, each category of building can be demolished or replaced with new structures within the design guidelines for new development. A list of buildings in each category of significance should be provided, after opportunity is provided for the property owners to review and testify about the findings of significance and related controls.

Sec. 5: Statement of significance. As a supplement to the general design standards and criteria for the district, it would be helpful to insert a statement of significance for each contributing structure in the district, so that these significant features are protected in the Certificate of Appropriateness review process. The description of the qualities of "dynamic continuity," and the virtues of "large bulk and minimal fenestration of the earlier warehouse structures," and "visual distinction is due in some cases to the original construction plus the carefully designed addition of upper stories," seems to encourage new development and upper additions to existing warehouse buildings, so long as these maintain the continuity of the district. To a property owner or project architect, these descriptions of the qualities of the existing area, together with the lack of policy or standards governing the demolition of contributory or non-contributory buildings in the district, invite proposals for demolition of existing buildings and new development in order to maintain the "dynamic continuity." If these statements of significance of the district do not accurately reflect the intent of the Landmarks Board or Planning Commission for the review of changes to the district, they should be changed. If they do, more explicit policies for how this concept of change is to be managed to protect the historic values of the district should be incorporated into an amended ordinance.

Sec. 6: Features. As with other historic districts, this ordinance expects a general description of the features of existing buildings in the district to serve as a substitute for standards or criteria for new development or for alterations to existing buildings in the district. The only standards or criteria for new development or alterations, other than the description of existing features, are found in Section 7, and these are very general except for those controlling signs. Since this description of features of existing buildings plays such an important role in the certificate of appropriateness review process, the general description of features of the area should be supplemented with a description of the important features of each contributing building, as suggested above.

Sec. 7: Additional provisions for Certificates of Appropriateness. These standards add some measure of guidance for the review of new construction, additions, or alterations to structures in the district, but they are very limited and, in some cases, ambiguous. For example, there are no standards for whether, or under what conditions, contributory buildings can be demolished or added to. There is no guidance on how upper level or other additions are to look in relationship to the existing structures. Since there are many buildings in the area that are smaller than the height limits would permit, and this is an area with a high market value for additional space, the City can expect to receive applications for additions to existing buildings. General statements, such as those in (b)2, that: "In areas characterized by newer buildings in concrete or stucco with industrial-style fenestration, new construction should reflect those design elements" may confuse more than clarify the intent of the district. Are new designs to be in concrete or stucco, or merely to have industrial-style windows? What is the operational definition of an "industrial-style window"? What parts of the district are characterized by newer buildings, in the absence of a list of these areas or buildings? Without more precise standards or definitions, each architect proposing a new development and each official reviewing the proposal is likely to have his or her own interpretation of these terms.

Alamo Square historic district

This is a largely Victorian and Edwardian residential district surrounding a landscaped public square, on the southwest side of the Western Addition neighborhood near Buena Vista. It was initiated in 1984 by the residents of the neighborhood, working with Victorian Alliance, Jean Kortum, and consultant Anne Bloomfield. It includes about 280 properties in seven full blocks, and parts of ten blocks generally between Hayes, Golden Gate, Divisadero, and Webster Streets, plus Alamo Square itself. The area contains some of San Francisco's grandest Victorian houses and most photographed streets, with excellent views of the downtown. The historic district ordinance (324-84) is contained in three and a half pages, and is supplemented by a case report prepared by Anne Bloomfield. The ordinance follows the "generic" model of the Webster Street historic district ordinance, with virtually the same findings, purposes, and other provisions. The ordinance has been effective in preventing the demolition of at least two of the contributory structures in the short period of time it has been in effect, but it is too early to measure its effectiveness in terms of controlling new development in the area. No conflicts between the Landmarks Board, the Department of City Planning, or the Planning Commission have been experienced in the administration of the ordinance to date.

Sec. 1: Findings and purposes. This section merely copies the standard language of findings and purposes from other districts, rather than specifying individualized findings or purposes for Alamo Square.

Sec. 4: Relation to the City Planning Code. This section, as in other historic districts, only indicates that nothing in the historic district ordinance shall supercede, impair, or modify any City Planning Code provisions for the area. The case report describes the existing zoning controls for the area which govern the general height and bulk of new development, but it does not evaluate whether this zoning is in conflict with the intent of the historic district ordinance. To avoid such conflicts in the future, this section might provide more specific height and bulk controls for sites of contributing buildings, and indicate that the more restrictive provisions of the two ordinances will prevail. For example, the 50 foot height limit in the eastern portion of the district might conflict with the desire to protect smaller structures in this area, but the limitations on the City's ability to prevent demolition under this ordinance and Article 10 may result in the loss of contributing historic resources.

Sec. 5: Statement of significance. This is a short summary of the information in the case report and therefore is incomplete as a basis for a legislative description of the district. This section should either incorporate the complete significance statement of the case report or those parts of the case report by reference.

Sec. 6: Features. This section incorporates the full case report into the ordinance by direct reference, rather than the indirect route taken in the Webster Street district. Since the case report is also more complete, it should serve as a base of legislative authority for decisions which rely on the case report to determine compatibility with the existing features of the district. It implies that the Planning Commission and the Board of Supervisors have reviewed and considered the case report in recommending and adopting the ordinance. The case report contains a detailed description of the significance, architecture, and history of the district. However, instead of an individual survey of each contributing and non-contributing property in the district, in the manner of the Webster Street district, the report attempts to describe a "typical" building in the Alamo Square District, generally from among the Victorian and Edwardian residences, along with compatible exceptions to this building, the early twentieth-century apartment blocks. While this may be useful for describing the characteristics and features of the district, it does not tell the individual

property owner or investor whether a specific property is considered a contributory building or not, and does not provide as much guidance to the Landmarks Board or the Planning Commission on the individual features of significance of each property, to guide certificate of appropriateness decisions. This generalization of the buildings into two types also may leave out buildings that do not fit the general description, but nonetheless contribute to the qualities of the district as a whole. The case report includes a survey map of the City's 1976 architectural survey ratings, but does not clarify whether all of the rated buildings on the map are considered contributory buildings or buildings of individual landmark significance. The City should consider amending the ordinance or the case report that is incorporated into it by reference to add a specific list and description of each property within the Alamo Square boundary, a determination of the significance of the property (non-contributing, potentially contributing, contributing, or individually significant), and a description of what is significant about the history and architecture of each structure that will guide any alterations to the landmark.

Sec. 7: Additional provisions. This section provides no more detailed standards or criteria for guiding alterations to buildings than the very general standards of Article 10, except for the standards prohibiting sandblasting or certain chemical treatments detrimental to older brick. These general standards, together with the general description of building types rather than the important features of each structure, could lead to uncertainty on the part of those applying for permits, differences of interpretation by members of the Landmarks Board and the Department of City Planning, and potential conflicts between the board's response to certificate of appropriateness applications and the response of the Planning Commission. This ordinance contains the same approach to design standards as all other historic district ordinances in San Francisco. Instead of directive design standards and guidelines, it describes the design features of the existing properties and calls for general "compatibility" with these features. Item (c) of this section appears to require that all new construction in the district must replicate the appearance of the existing buildings, but it does not indicate which building type (Victorian, Edwardian, or 1920s apartment buildings) it is to replicate ("... shall conform with the general profile of the district, especially as to scale, sculptural qualities of facade and entrance detailing, fenestration patterns, and materials"). Replication of older building styles would generally not be permitted under the Secretary of the Interior's standards of rehabilitation, which the Landmarks Board has adopted by resolution, so this ordinance or the Landmarks Board policy on this matter should be clarified.

Liberty Hill historic district

This district was initiated by residents of the area in order to protect it from inappropriate changes or demolition of the Victorian structures that make up 70 percent of it. The district has a significant collection of nineteenth century middle-class housing. Liberty Hill is one of the earliest residential neighborhoods away from the downtown, constructed between the 1860s and the turn of the century and aided by the extension of the City's first street railroad down Valencia Street. The 1906 fire was stopped at the Twentieth Street boundary of the district, preserving the neighborhood as an example of the early development of the City's residential areas. The two blocks of Liberty Street within the district were listed on the National Register of Historic Places at the request of the property owners. This ordinance is accompanied by a descriptive summary of a very detailed case report, prepared by the Liberty Hill Residents, with the assistance of Anne Bloomfield and Victorian Alliance. This report serves as the case report of the Landmarks Preservation Advisory Board, and is incorporated by reference in the designating ordinance. The ordinance designating this district is only three and a half pages, about the same length as previous historic district ordinances.

This district is a good example of how boundaries defined by the neighborhood residents, with the assistance of professional consultants, serve the community's and the City's interest in preserving not only the physical evidence of a historic neighborhood, but a neighborhood's sense of its own cultural and social heritage. While these boundaries may not conform precisely to the boundaries that would meet National Register historic district criteria, they serve local interests while giving the community that initiated, researched, and advocated the designation of the district a proprietary interest in the long-term future and maintenance of the district. In the absence of strong neighborhood leadership and volunteer assistance in the designation of historic districts of this kind, San Francisco's government agencies are unlikely to initiate or designate as many historic districts as are needed or that would qualify under Article 10 criteria. Once designated with this kind of citizen involvement, the residents will have a continuing interest in enforcement of the landmarks controls, minimizing enforcement demands on the City.

Sec. 1: Findings and purposes. This section is very short and merely indicates that the designation will carry out the purposes of Article 10, and that preservation on an area basis rather than on the basis of individual structures alone is in order. No findings of unique significance of this district or findings of need for protection in the face of threatened changes to the

district are made. The Landmarks Board and Planning Department should consider adding more specific findings and purposes to this designation ordinance to guide precise design standards.

Sec. 3: Location and boundaries. This section of the ordinance incorporates the boundaries defined in the case report, which presents one of the stronger rationales for the boundaries of a historic district of any of the historic district ordinances, because of its reliance on historical and legal boundaries, e.g. the pueblo charter line of 1834 and the Twentieth Street fire boundary of 1906. The eastern boundary is not as precisely defined, but relates well to the physical existence of cottages of the period.

Sec. 4: Relation to City Planning Code. This section defers to the general provisions of Article 10, and indicates that the ordinance does not supersede, impair or modify other provisions of the Planning Code for controlling uses, height, bulk, lot coverage, floor area ratios, open space, parking, and signs. This standard reference could perpetuate conflicts between the Planning Code and the more restrictive purposes of the historic district designation, if the height, bulk, and other physical controls of the Planning Code allow development density or structures that exceed the height and scale of the Victorian structures that characterize the area. These conflicts are most likely to occur in the strip of commercial zoning along Valencia Street, which is zoned C-2. Consideration should be given to amending this ordinance to make the height, bulk, and physical controls of the historic district ordinance more specific, and to provide that, in the event of conflict between the provisions of the Planning Code and the historic district ordinance, the more restrictive would control. In addition, there is a high potential for increased conflicts between the C-M zoning district immediately to the north of this district and the protection of qualities of the historic district. The C-M zoning permits 9:1 floor area ratio density, as high as the financial district (C-3-0), and a 50 foot height limit. The C-M Zoning densities and height limits should be reexamined, particularly at the edge of the historic district.

Sec. 5: Statement of significance. This section provides the minimal summary of the case report, but does not reference it. Moreover, it does not define the period of significance, although it indicates the percentages of each architectural style that make up the district. More specific references to the case report might be considered.

Sec. 6: Features. This section incorporates the Landmark Board's case report, with appendix titled "Liberty Hill Historic District." It is not clear by this reference whether the

ordinance incorporates only the summary report, entitled "Liberty Hill Historic District" and prepared for the Landmarks Preservation Advisory Board by Liberty Hill Residents, or whether the large bound volumes of the research that support the summary are also incorporated. The referenced report is also devoid of any identification as a San Francisco Department of City Planning or City document. As the City's use of Heritage's architectural surveys for the Downtown Plan was challenged by property owners, this case report might also be challenged as an undue delegation of City responsibility to non-appointed neighborhood groups. The case report should probably be redrafted to indicate that the Landmarks Board and the Department of City Planning staff have evaluated the information and have found it to be technically sufficient, and that its adoption by reference in the ordinance represents the recommendation of the Department of City Planning and the Planning Commission. This section appears to have the same limitations as all other historic district ordinances examined in this study. It merely refers to the description and photographs of the existing buildings, rather than indicating which of these features must be preserved, or whether alterations and new additions are required to be of the same design or detail.

Sec. 7: Additional provisions. This section relies on the very general standards and criteria of Section 1005 of Article 10, and indicates which changes require a certificate of appropriateness. It indicates that new construction on vacant sites "shall conform to the general profile of the district, especially as to scale, sculptural qualities of facade and entrance detailing, and fenestration patterns and materials described in Section 6 (the case report of existing features)". This statement appears to require that new buildings in the district copy the style and details of the Victorian period, but does not indicate what the "general profile" of the district is. It would be very difficult for a property owner, investor, resident, or the Planning Commission to determine what kinds of alterations or improvements to the district would be consistent or inconsistent with these general provisions. Especially in the commercially zoned area of the district, where some of the buildings have been altered over time, more precise design standards or guidelines would be helpful in reviewing any proposed changes to the structures. They would also help avoid conflicts in interpretation of the ordinance between the Department of City Planning staff, the Landmarks Board and the Planning Commission.

6. REVIEW OF SUB-AREA PLANS

In the last five years the Planning Department has developed an unprecedented number of plans for specific areas of the City undergoing rapid change. San Francisco has a solid national reputation for special area planning through collaborative procedures involving many public agencies, neighborhood and special interest groups, and the public. Even before the Downtown Plan was developed, special area plans, such as those for the Northeast Waterfront, the Golden Gate National Recreation Area, and San Francisco Bay, established national models for collaborative planning. San Francisco has also had its share of negative experience with planning for special areas, particularly in redevelopment areas where the outmoded "urban renewal" process has resulted in nearly total clearance, rebuilding, and the loss of vast amounts of affordable housing, historic and architectural resources, and small businesses, compounded by questionable urban design benefits in some areas.

The Planning Department has recently completed plans and/or rezoning for the downtown, the North of Market residential use district, and the neighborhood commercial areas and Rincon Hill. Other plans and studies are being prepared for Chinatown, Fisherman's Wharf, the Mid-Market area of the downtown, Mission Bay, South of Market, and Van Ness Avenue. Most of these current plans and zoning studies are related to the significant reduction in the overall development potential and height and bulk limits for new development in the downtown, so that mixed residential and commercial areas surrounding the downtown are not adversely affected by the spill-over of development pressures from the more restricted downtown. Each of these completed and proposed plans has some form of historic preservation policies, but the approach to preservation is not uniform. Moreover, some are quite unspecific about how changes to individual buildings or districts are to be managed. This analysis will review each of the completed plans or rezoning ordinances, along with each of the proposed plans, to determine whether the preservation programs will be effective in preserving the historic and architectural resources of the area in question.

a. The Downtown Plan

The Downtown Plan ordinance was passed by the Board of Supervisors on September 10, 1985, signed by the Mayor on September 17, and became law on October 17, 1985. Due to the extensive planning, evaluation, public debate, and the open political process that led to the adoption of the plan, and the limited time that the plan has been in effect, an evaluation of its effectiveness in this report would be premature and unwarranted. This review will merely discuss those aspects of the Downtown Plan that should be closely monitored by the City and preservation groups to assure that the preservation goals are carried out. Other comments on the Downtown Plan provisions are contained in the discussion of the Planning Code above.

In general, local preservation groups, who had a major role in the design of the plan, and the national preservation community are very pleased with the product of this lengthy process, and are optimistic about its future effectiveness in preserving architectural resources. The Downtown Plan has become a model for historic preservation that many other cities are closely studying for applicability to their own jurisdictions.

The major elements of the plan that will help preserve historic and architectural resources include:

- redirection of the expansion of new office development to the area South of Market Street, away from concentrations of significant older buildings;
- a reduction in height and bulk limits for new development to a level approximating the size of existing older buildings, especially North of Market Street;
- prohibition of demolition of 250 significant buildings, and encouragement for preservation of 189 contributory buildings;
- establishment of six conservation districts;
- design review for alterations to significant and contributory buildings by the Landmarks Board and the Planning Commission, following specific standards;
- transferable development rights for all significant and contributory buildings, and a few non-significant buildings in conservation districts, with permanent restrictions on the demolition or alteration of such buildings after TDRs have been transferred.

A major concern of preservation groups in the design of the ordinance centered on Section 1105, which allowed property owners and other interests to apply for reconsideration of any building ratings within 45 days of October 17, 1986. However, due to

excellent Planning Department staff analysis, strong support for the preservation goals of the plan by the Landmarks Board and Planning Commission, and testimony by Heritage and other groups to protect the rating system and to upgrade some of the buildings, only nine building ratings were changed out of the 432 rated buildings in the plan, and three of the most important buildings were upgraded to higher categories of protection.

General provisions:

Sec. 102.8: Definition of gross floor area. Section 102.8(b) of the code permits several exemptions from calculations of gross floor area, which could affect the amount of TDR that could be transferred. For example, one exemption promotes the use of ground floor retail and personal service space in particular areas, and another permits non-profit cultural, educational, recreational, religious, or social service organizations to deduct facilities available to the general public. These exemptions should serve a valuable public purpose by allowing owners of historic buildings to incorporate such uses in their buildings, and at the same time to sell more transferable development rights. This provision should be particularly useful for cash poor non-profit organizations that own historic property, enabling them to sell TDR in order to upgrade their historic properties and to maintain them for public use. The administration of these exemptions should be closely monitored to ensure that the public purposes of the exemptions are being met.

Sec. 123: Maximum floor area ratio. Limits to the maximum amount of TDR that can be used on any receiver site were established to prevent the size of buildings using TDR from overwhelming the scale of neighboring buildings. However, with carefully designed height limits, the annual limit on new office space, and the rigorous analysis and design review of projects subject to the annual limits, these restrictions on TDR may be redundant and unnecessary in the long term. The maximum TDR limits should be monitored over time to determine whether they have a major impact on reducing the demand for TDR, as discussed in Section 128 below.

Sec. 124: Basic floor area ratio. The imbalance between the new downtown FAR limits and those for the C-M and C-2 districts, are discussed in relationship to the Planning Code above.

Sec. 128: Transfer of development rights in C-3 districts. Transfers of development rights from historic buildings were provided in the Downtown Plan for several purposes: as a planning tool to shift development South of Market without the effects of "windfalls" or "wipeouts" of property values that typically result from major shifts in zoning density; as a way of maintaining a reasonable economic value for highly restricted

preservation lots, to ensure against a taking of property without compensation; and as a way of making the preservation policies of the plan fair, equitable, and politically acceptable. TDR was never viewed as a legally required compensation for strict regulation. The Planning Department conducted detailed analyses of the supply of TDR from all preservation sites, and of the potential demand for TDR from the development opportunity sites, to ensure a balance between the two that would maintain a healthy market for TDR and an acceptable price to the seller.

However, with the changes in the Downtown Plan ordinance in the final stages of legislative adoption, and the recently passed Proposition M, certain provisions were added to the plan that have had a major impact on the TDR market since the Plan was adopted. First, many high-rise projects that were under review by the Planning Department during the plan's review were "grandfathered" or exempted from the controls of the Downtown Plan, providing a major peak in the supply of new office space that could not be immediately absorbed in the market. Second, an annual limit of 950,000 square feet of new office space over three years was imposed, subject to the Planning Department's review under legislated criteria (see Sec. 321 below). Third, Proposition M further limited the amount of new office space to 475,000 square feet per year, until the "grandfathered" project's space is absorbed. The rehabilitation of existing buildings, new office buildings under 50,000 square feet, and buildings on publicly owned land or in redevelopment areas were exempted from the Plan's annual limit, but not from Proposition M. With the combined effects of the glut of new office space already approved and the throttling of demand for TDR by the annual limits, the absorption rate for TDR may be substantially slower than originally estimated. However, these provisions have also affected the absorption rate for new office space developed without the use of TDR, so the TDR market may be expected to act in much the same way as the market for land suitable for new office development. It is generally believed in the development community that there is a large surplus of supply of TDR over the limited demand for this TDR, which is driving the price of TDR down. Further, with the unpredictable nature of the annual limit and Proposition M decision processes, TDR purchases are only made through option agreements, subject to successful completion of all permit approval procedures. With limited absorption of TDR and low prices, few owners of historic buildings are likely to be selling TDR in the short term, and thus few buildings will be permanently protected by the restrictions applied at the sale. This could especially affect the number of contributory buildings that are saved in the downtown, because these building owners have the option to sell TDR or replace the structures with new buildings. The Department of City Planning should reconsider whether more restrictions on the demolition of contributory buildings are necessary and to advise the Board of Supervisors of the indirect effects of the annual limit on historic

preservation. Perhaps more priority should be given to projects using TDR (i.e. those saving more historic buildings) in the competition for the annual limit on office space. This is discussed in greater detail in Section 321 below.

Section 128 provides a very complicated process for obtaining a Statement of Eligibility to Sell TDR, a Certificate of Transfer, and Notice of Use of TDR. Since San Francisco has adopted the most ambitious and comprehensive system for TDR in the nation, and other cities that have enacted TDR programs have failed to make the process work effectively, the Planning Department and the City Attorney should closely monitor whether this complicated procedure for TDR transactions is discouraging their sale and indirectly inhibiting the preservation purposes of the TDR system. Opportunities for simplification of the TDR transactions should be sought as more experience in the administration of the system is gained.

Sec. 263.8: Exceptions to height limits. In the Kearny-Market - Mason-Sutter conservation district, additional height above the base level of 80 feet can be granted as an exception up to a maximum of 130 feet, if the additional height will not add significant shadows to public sidewalks and parks, if an appropriate transition to adjacent higher or lower buildings is provided, and if the additional height is set back from the street frontage to maintain continuity of the streetwall. The impact of a project on the site of an existing contributory building, or on the appearance of adjacent rated buildings, is not among the criteria for granting an increase over the 80 feet. While the review standards of the Section 309 design review process will be used in the review of such exceptions, these standards do not provide any protection for contributory buildings. Most of the significant and contributory buildings in the conservation district are 80 feet in height or lower, and could be adversely affected if most or all new development were permitted to be constructed to the 130 foot limit. The Landmarks Board, the Department of City Planning, and preservation organizations should closely monitor the effects of this exception process on economic pressures to demolish contributory buildings and on the overall historic scale, character, and environment of the district. If such exceptions create a pattern of incompatible new development, additional criteria should be added to this section to discourage exceptions to building heights above 80 feet where there are contributory buildings on the site, or if significant or contributory buildings of lower height in the same block would be affected.

Sec. 309: Permit review in C-3 districts. This section provides for design review of new development and significant alterations in the downtown. It is a key element of the Downtown Plan that will provide control over the compatibility of new development with the historic buildings and the appropriateness of

alterations to historic buildings, based on specific design criteria in Section 1111.6(b) of the ordinance. It is also intended to achieve the objectives and policies of the Master Plan and the purposes of the Planning Code, so more specific policies included in a new preservation element could be applied in this review.

This section provides the authority for the Department of City Planning and the Planning Commission to impose conditions for the approval of a project application, but it does not explicitly allow for a denial of such applications. This review process provides a powerful tool to the City to require changes to projects that are not compatible with the existing qualities of the downtown and its historic buildings. Decisions made and precedents established in the near-term experience of the administration of this review process could have a major effect on the successful implementation of the preservation policies and standards of the Downtown Plan. Therefore, the Landmarks Board and other preservation organizations need to closely monitor these decisions to ensure that alterations to significant and contributory buildings are consistent with the standards and sound preservation practice. This is essential to ensure that the quality of new development in the downtown maintains the valuable historic character of San Francisco.

Implicit in this section, and in Chapter 11, is the notion that no contributory buildings are required to be preserved, and that any such building is replaceable with new development that meets the standards and review process of Section 309. Many people believe that some qualities of older buildings, such as the patina of aged materials, the craftsmanship of earlier architectural decoration, the refinement of neoclassical design, or the somewhat haphazard (but valuable) diversity of existing uses cannot be reproduced in new construction, regardless of how much review of the design is conducted or how many conditions are placed on the project applicants. Many contributory buildings with these qualities are likely to remain in the downtown because of the reduction in height and bulk limits, especially in the conservation districts. However, if these limits do not discourage demolition of contributory buildings, the City should continue to evaluate the proper balance between encouraging new economic redevelopment of the sites of contributory buildings and the preservation of these irreplaceable values, in addition to the need to preserve buildings of the highest architectural merit. More authority could be given to the Landmarks Board or Planning Commission to preserve some of these buildings on a case-by-case basis, or more explicit and predictable protection policies could be added to the class of contributory buildings in the plan.

Proposals for new development or alteration that do not exceed 50,000 gross square feet of floor area, or that do not

need any exceptions to the Planning Code requirements, can be approved by the Planning Director and Zoning Administrator. Appeals from these administrative decisions must be made to the Planning Commission within 10 days of notification of the proposed approval. Alterations of significant and contributory buildings are reviewed by the Landmarks Board, pursuant to the procedures and standards of Article 11. Those concerned with tracking the nature of these administrative approvals, or the precedents that might be established for subsequent interpretations of the code, should follow these decisions closely, and should consider appealing decisions of major importance to the Planning Commission for policy decisions, when warranted. This administrative approval process has the additional benefit of streamlining the approval of compatible new development and alterations.

Sec. 321: Office development limits. This section establishes a 2.85 million square foot limit on new office development in San Francisco over a three year period, or 950,000 square foot per year. It exempts many projects that were under review by the Planning Department prior to the Downtown Plan ordinance approval, projects under 50,000 square feet, rehabilitation of existing buildings where a change of use is not involved, and projects on land under the jurisdiction of the Port Commission, School Board, Redevelopment Agency, or the state or federal government. However, these limits and exemptions have been superceded by Proposition M, which limits new office space to 475,000 square feet per year, until the "grandfathered" projects are absorbed, and eliminates the public property exemption.

In determining which office developments included in the annual limit best promote the public welfare, convenience, and necessity, seven criteria are included in the Plan for consideration by the Planning Commission, Board of Supervisors, and Board of Permit Appeals. One of these is "The contribution of the office development to, and its effects on, the objectives and policies of the Master Plan." As indicated in the analysis of the existing policies of the Master Plan above, historic preservation policies have been included in several elements. However, these are not specific enough to provide sufficient direction or priority for the Section 321 review process as it would affect historic resources. Another criterion is "The use, if any, of TDR by the project sponsor." It was the general intent of the Board of Supervisors in adopting this criterion to give consideration or preference to projects that would use TDR to carry out the preservation goals of the Downtown Plan, and thus save historic buildings in the process of permitting new high-rise development. However, neither the specific language of the ordinance nor the guidelines for implementing this project approval process appear to carry out this intent. For example, the guidelines of the Department of City Planning implementing the Office Development Limitation Program provide no additional

rationale or direction for how the department will take TDR into consideration in selecting projects. The department report on the first review period for this program (the 321 Report) devoted only four paragraphs of a 53 page report on this criterion. No information on the quality or number of the historic resources being preserved through TDR by the proposed projects is provided. The report seems to give a higher ranking in this criterion for the proportion of the overall gross floor area of a proposed project that is made up of TDR, than for the amount of TDR used or the number or quality of buildings that will be preserved as a result of this criterion.

For example, the report gave a medium rating for the 235 Pine Street project's use of 55,700 square feet of TDR (38 percent of the building), but a low rating for the 299 Second Street project's use of 80,600 square feet of TDR (30 percent of the building).

If this criterion for the use of TDR is going to have any practical meaning in the selection of worthy office developments, either the legislation or the guidelines should be amended to relate the use of TDR to the preservation goals of the Downtown Plan. Projects should be rated higher in the overall rating system if they plan to use more TDR than other projects (not just include a higher proportion of TDR in the building), or if the use of the TDR results in the long-term protection of significant or contributory buildings. A related policy issue that needs to be resolved is whether the use of TDR should favor additional restrictions on the highest quality buildings or, since contributory buildings are not restricted from being demolished, whether it should favor preservation of more contributory buildings, whose future might otherwise be in jeopardy without the use of the TDR. The Landmarks Board and preservation organizations should give some consideration to this issue, and should provide advice to the Planning Department and the Board of Supervisors. Related policy issues include whether proposed projects using TDR will cause the demolition of other architecturally important buildings (i.e. rated by Heritage, but not protected by the plan), and whether the department should give any priority to the use of TDR from historic buildings owned by non-profit groups who also provide permanent public service functions, as provided in Section 102.8(b)15 of the code. The most important policy issue is whether all of the criteria for the selection of the new developments under the annual limit should be given equal weight, either in the ordinance, the guidelines, or on a case-by-case basis at the time of Planning Commission approval. The Planning Department staff report for the first review period wisely avoids a cumulative ranking of the projects on the basis of all criteria, implying any higher value for one criteria over the others. In the absence of a specific ranking of the criteria by the legislative arm of the City, it is probably appropriate that this very important and politically sensitive selection process be made on a case-by-case review by

the commission, after full staff analysis and public hearings for each round of projects.

In the discussion of transfer of development rights provisions of the Downtown Plan above, the effect of Section 321 approvals on the demand for TDR is discussed. This process is inherently unpredictable, and probably will continue to diminish the demand for and value of TDR. However, the annual limit might also have the effect of reducing the economic pressures for development of sites of significant or contributory buildings in the downtown, the development of office buildings on sites of important buildings outside of the downtown (the annual limit applies Citywide), and may give the Planning Department the level of control over new development needed to minimize the adverse effects of new office development on historic resources in the future. If more specific historic preservation policies were made a part of the Master Plan, the selection criterion relating proposed new developments to these Master Plan policies could serve this purpose.

One likely effect of the annual limit on large new office projects is the increase in demand for rehabilitation of well-located older commercial office buildings, because completed rehabilitation projects can command nearly the same rents per square foot of floor area as new buildings, and they are exempt from many of the special fees applied to new developments. Rehabilitation projects which do not involve a conversion or change of use, do not compete for the annual limit of office space, and are typically approved in a fraction of the time of a new development project. The long-term result of this redirection of demand could mean the seismic upgrading and modernization of many of the more than 400 significant and contributory buildings in the downtown, extending their useful lives for many years. Obviously, one of the greatest ultimate threats to historic resources in San Francisco is the recurrence of another great earthquake. Indirectly, the annual limit on new office space may provide the incentive to bring most of the City's architectural resources up to modern codes, while providing some economic resources through the sale of TDR for these improvements to be made.

Sec. 325: Sunset. This is not a section designed to preserve great views of San Francisco's sunsets, but an automatic expiration of the annual limit on office space three years after the effective date of the ordinance. This section has been superceded by Proposition M, which extended the annual limit indefinitely, or until changed by another initiative.

Article 11: Preservation of buildings and districts of architectural, historical, and aesthetic importance in C-3

This new section of the Planning Code implements most of the preservation policies and controls of the Downtown Plan. It is the most specific and complete of the City's preservation programs, and provides the greatest level of protection to the 250 significant buildings. Much of the protection for the six conservation districts described in this section and the appendices, as well as for the contributory buildings, is contained in the reduced height and bulk controls and the TDR provisions discussed above. The City now faces the challenge of bringing the level of specificity of policy and the protection for architectural resources outside of the downtown up to the same level as this article. Of major importance in San Francisco, and as a precedent for other parts of the country, is the way this article integrates historic preservation into the comprehensive planning and zoning of the City. However, this approach to historic preservation involved more than five years of intensive staff work and a substantial level of effort for analysis of each property, notice to affected property owners, and public involvement, although it probably involved substantially less effort than would have been required if each of the buildings designated in Categories I through IV had been processed individually as a city landmark under Article 10. The Downtown Plan approach demonstrated that protection for historic buildings in a given geographic area can be planned for at the same time as other environmental and economic values, and large groups of buildings can be processed for protection at one time. This advanced comparative evaluation of architectural resources and adoption of legislation for their protection is far more effective, rational, and equitable than ad hoc consideration of landmarks one at a time. This more comprehensive treatment of architectural resources also avoids unnecessary conflicts over the effects of individual designations on proposed development projects, keeping the issues of architectural or historic merit separate from the economic development concerns of a particular property owner. As indicated above, most of the major controversies over historic preservation in San Francisco have occurred because landmark designations were proposed late in the review process of proposed developments on the landmark sites, when it was difficult for the Planning Commission or Board of Supervisors to separate the issues of merit from the economic costs or benefits of the proposed developments.

Due to the thoroughness of Article 11, the City should consider adopting it as a model for preservation elements of all other sub-area plans. Whether other features of the Downtown Plan that serve to protect architectural resources, such as TDR, should also be adopted for other sub-areas should depend on the individual circumstances of the area and the relationship between preservation and other goals of the sub-area plans.

Only those parts of Article 11 that are in need of monitoring, or that might need to be changed if used in other plans, are evaluated below, due to the limited time that it has been in effect.

Sec. 1102: Standards for designation of buildings. A major distinction between these designation standards and the standards used in Article 10 is that Downtown Plan final categories of significance are based largely on architectural design and relationship to the environment, which were only two of 13 criteria used by Heritage in its survey methodology. While the department considered all thirteen criteria in its initial screening of buildings to be rated in the four final categories of significance, it isolated out only "design" and "the environment" to define which of the larger group of buildings belonged in each category. The Landmarks Board generally uses all of the criteria used by Heritage, which are in turn generally consistent with the criteria used in the National Register of Historic Places. In the case of relationship to the environment, the Department has further limited the criterion to "continuity," one of three environmental factors considered in the Heritage system, eliminating consideration of "setting" or "landmark" qualities of the buildings. This seems rather arbitrary and was criticized by at least one member of the Planning Commission during the 1105 reassessment process. Even the Heritage evaluation system does not adequately consider the issue of "scarcity" of a particular building type. For example, the National Register would give some value to whether a building is one of the last remaining buildings of a particular architectural style, one of a few remaining buildings of a particularly important architect, or one of the last vestiges of the type of building in a neighborhood that has undergone substantial redevelopment. In at least one case, the Planning Commission gave serious consideration to this issue in upgrading the rating of a downtown building, in the 1105 review. Landmark designations, such as the Klocker's Blacksmith Shop on Folsom Street, have often been based on this factor of scarcity.

The basic policy question to be considered before the Downtown Plan standards are adopted for other areas is whether a valid public purpose is served by preserving and controlling alterations to buildings that are important historically, but not architecturally or environmentally significant. The standards of Article 10, as general as they are, include "having a special character or special historical, architectural, or aesthetic interest or value." Part of the City's reason for limiting the standards of the Downtown Plan designations was to continue the designation process of Article 10 in the Downtown on a case-by-case basis, allowing additional designations of landmarks based on their historical importance alone. As a model for other parts of the City, this rationale may lead to some redundancy and confusion in the designation process, and seems to detract from

one of the primary thrusts of the plan: to be comprehensive. Treating different attributes of architectural resources in a fragmented, single-focus manner perpetuates the kind of single-minded or special interest approach to resource management that the plan has generally been very successful in overcoming. It also increases the probability that final ratings of significance using only two criteria will be inconsistent with ratings established under National Register criteria or local survey methodologies. The Department of City Planning should consider broadening the standards for final designations of buildings under other sub-area plans to include all criteria of significance normally used by the Landmarks Board, Heritage, and the National Register of Historic Places. However, it would be premature to consider changing the ratings of the buildings in the downtown until the dual process of plan designations and continuation of Article 10 has sufficient time to be tested and evaluated. The success of this dual system of protection will depend upon the number of historically significant buildings in the downtown that remain unprotected, the resources of the Landmarks Board to continue designation of such threatened buildings, and the competing needs for protection of buildings in other parts of the City. For other areas, it would seem simpler and more efficient to establish a single designation process and more comprehensive standards.

Sec. 1104, 1106: Notice of change of designation, and designation of additional buildings. The legal procedures for designation of buildings under the categories of significance of the Downtown Plan were very thoroughly researched because of legal challenges threatened during the design of the ordinance. As a result, the plan's due process requirements to establish ratings of architectural resources and the legal controls to protect these resources, should become the model for other parts of the City, particularly when several buildings in a given plan area are proposed to be designated at the same time. For example, the department should consider adopting this same process for sub-area plans and zoning changes for South of Market, Chinatown, and Van Ness Avenue. The grounds for designation or change of designation in Section 1106(h) are too narrow to be incorporated into other sub-area plans, because initial designations have not yet been established in these other areas. Once established for the first time under broader considerations as discussed above, a similar provision limiting the grounds for changes in designations might be applied. The Landmarks Board, Department of City Planning, and preservation groups should closely monitor applications for changes to ratings under the Downtown Plan to ensure that the preservation goals of the plan and the number of buildings protected by it are not eroded over time when economic pressures continue for the redevelopment of their sites.

Sec. 1105: Reconsideration. If standards and criteria for designation of buildings are adopted before the adoption of the

lists of buildings, the reconsideration of designations required under this section should be unnecessary for other sub-area plans. However, this process may be a useful alternative to prior legislated standards, if it is necessary to adopt a complete list of buildings in a particular plan, such as Van Ness Avenue, at the time the comprehensive rezoning is proposed for adoption. In effect, this permits an interim adoption of the list and the regulatory standards for a comprehensive plan at the same time, protecting these buildings until reconsideration.

Sec. 1107: Procedures for designation of additional conservation districts, or boundary change of conservation districts. Due to the high value of land in several conservation districts, there is likely to be strong political pressure in the future to reduce the size or eliminate some of the conservation districts, in order to allow higher density development. These procedures and standards should provide some protection for these districts, but the Landmarks Board, Department of City Planning and preservation organizations will need to maintain political support for the districts in the Downtown Plan.

Sec. 1110, 1111: Alteration of significant or contributory buildings or buildings in conservation districts. While this section of Article 11 can provide protection for the architectural integrity of significant or contributory buildings and conservation districts, it could also prove to be the weakest link in the Downtown Plan's preservation element. Section 1111.1 establishes definitions of "major" and "minor" alterations. Minor alterations can be authorized by the Zoning Administrator without review by the Landmarks Board or Planning Commission. These determinations of the significance of alterations in the early stages of Downtown Plan implementation could establish precedents for future decisions, and need to be monitored closely. In the long term, inappropriate alterations to significant and contributory buildings could reduce the importance of each building, and could lead to their removal from the protected lists through Section 1106. Perhaps each year the Landmarks Board should devote one of its meetings to a public review of all applications for "minor" alterations to determine if approval of minor alterations is adequately protecting these resources, and to determine if changes in the definitions or procedures are warranted. The Landmarks Board and Planning Department might also consider developing more specific design guidelines for how to alter significant and contributory buildings to maintain their character, and how to interpret Section 1111.6 standards.

Sec. 1111.6: Standards and requirements for review of alterations. The Downtown Plan incorporated specific design standards for alterations to historic buildings, drawn from the Secretary of the Interior's standards for rehabilitation, but these were adapted to the department's more lenient attitude

toward alterations. For example, the Secretary of the Interior's standard number 3, "all buildings, structures, and sites shall be recognized as products of their own time," has not been adopted by the City. The standards of this section should provide much more predictable guidance for property owners and preservation groups. This will help ensure that the architectural integrity of the buildings will be maintained. Similar standards should be adopted for the review of alterations in existing historic district ordinances, for individual landmarks, and for sub-area plans discussed below. As indicated in the review of Article 10 above, the Landmarks Board has adopted a resolution to use the Secretary of the Interior's standards for the review of alterations under Article 10 and Article 11 at its October 2, 1985 meeting. Where the Secretary of the Interior's standards differ from those in this section, conflicts in interpretation may occur between the Landmarks Board and the Planning Commission, which must follow the standards of Section 1111.6. The Landmarks Board should reconsider its action of October 2, and should either accept the legally binding standards of Section 1111.6 or recommend to the Planning Commission and the Board of Supervisors that these standards be brought into full compliance with the Secretary of the Interior's standards. There is currently a substantial debate going on within the national architectural and preservation communities about the appropriateness of the Secretary of the Interior's standards 3 and 9, relating to contemporary additions to older buildings. Until these issues are resolved, and until the board and the Planning Commission have more time to use the standards in the Downtown Plan, it would seem appropriate to continue the use of Section 1111.6 standards at both the Planning Commission and the Landmarks Board. The effectiveness of these standards in maintaining the architectural character of the protected buildings, along with their relationship to the Secretary of the Interior's standards, should be monitored by the board to determine whether future changes to the standards might be warranted.

Sec. 1112: Demolition of significant and contributory buildings. When combined with Section 1112.7, this section establishes very limited conditions under which significant buildings or contributory buildings from which TDR have been sold can be demolished. The conditions are designed to protect the City from challenges of a "taking" of private property without compensation, or from endangering the public safety by requiring the preservation of an unsafe building. These detailed information requirements for applications for demolition permits, along with the conditions for approval of such applications, should be incorporated into Article 10 and the ordinances of other sub-area plans which incorporate historic preservation controls.

Sec. 1112.2: Disposition of applications. This section requires the approval of any application for the demolition of a contributory building in a conservation district, from which no TDR have been transferred, if a building on the site has been approved under other provisions of the code. This "as-of-right" explicit authority to demolish contributory buildings removes any consideration of the future architectural or historic value of the contributory building and prevents the Planning Commission from requiring that such buildings be preserved, even if the replacement structure is less compatible with the conservation district than the existing building. The implementation of this section of the plan should be closely monitored by the Landmarks Board, the Department of City Planning, and preservation groups to determine if the other controls for height and bulk, the TDR incentives, and the design review process for new construction are effective in maintaining the historic scale and character of the conservation districts. Future strengthening of the conditions for approval of demolition permits for contributory buildings would be in order if substantial changes occur in the qualities of the districts or in the number of individual buildings that establish their character.

Sec. 1117: Maintenance requirements. This section protects the public against unsafe structures and prevents "demolition by neglect." It is a standard that has protected landmark buildings in many other cities. This section should be copied in revisions to Article 10 for City landmarks and property in historic districts, or this section should be amended to include such property.

Appendices E through J: Conservation districts.

Each of the appendices provides individual findings, purposes, descriptions, justifications, and standards and guidelines for review of new construction and certain alterations for each of the districts. They are substantially more detailed and specific than the ordinances for historic districts designated under Article 10 of the Planning Code. The standards and guidelines tend to be written in terms that are more predictable, measurable, and, therefore, understandable by property owners and their architects, when applying for permits to alter or for new development within the districts. The descriptions and the standards and guidelines tend to avoid ambiguous or general terms that could have many different meanings to City regulatory officials, and should avoid many of the conflicts that have occurred over applications in historic districts. While some general terms such as "compatibility" are used, as in the historic district ordinances, these appendices offer more specific guidelines to be used in assessing compatibility. These appendices also provide more interpretation of the design intent of the districts, not just references to the

generic description of the existing features of the district, as in the historic district ordinances.

These appendices could serve as a model for updating and amending each of the historic district ordinances, which have been discussed in the review of Article 10 above.

Other special area plans

This review of other recently adopted or proposed plans or rezoning ordinances for special areas of the city will be limited to historic preservation issues that are relevant to the development of the Master Plan element for historic preservation and the relationship of general planning policy to each sub-area. It will address the general planning and regulatory approach to historic preservation in the sub-area, rather than the adequacy of each list of buildings or the preservation policy for each building. For example, concerns of consistency, completeness, specificity, and effectiveness in carrying out the preservation goals or policies of each plan will be discussed, not whether the list of buildings identified for preservation includes or does not include a specific building considered to be of merit by the author.

While individualized approaches for historic preservation may be appropriate in some sub-areas and not in others, it is generally assumed that all sub-area plans should not be completely different in their approach to preservation. It is also assumed that the benefits of integration of historic preservation with other public values, as established in the Downtown Plan, should be a guide for each of the plans recently adopted or under consideration.

b. The Chinatown Plan: preliminary policy and zoning recommendations

The proposed Chinatown Plan and rezoning recommendations, dated April 1986, are based on a general concept of lowering height, bulk, and density for new development commensurate with the reduction of the zoning potential in the Downtown Plan, and on the recognition of the historic and architectural importance of Chinatown. The proposal recognizes and builds upon the neighborhood's importance as a resource of affordable housing and small businesses, as a major destination for visitors to the City, and as a unique cultural community of national significance to Chinese-Americans. A companion Issue Paper No. 5, "Urban Design, Preservation, Open Space, and Social Services in Chinatown," provides much of the written description of the architectural and historic character of Chinatown that the plan and zoning recommendations are intended to protect. Two major reports, one by the Chinese Consolidated Benevolent Association and another by Asian Neighborhood Design, the Chinese Chamber of

Commerce, and the Chinatown Resource Center provide additional information and recommendations as background for the City's proposals. The latter report addresses the issue of historic preservation in some depth, recommending a larger historic district than the City's proposal.

The City's recommendations that relate to historic preservation include:

- lowering of height limits generally from the existing range of 160 feet, to 65 feet and 50 feet, with only two blocks of higher proposed height limits to 200 feet, with a conditional use. The height limit in the proposed historic district would be 50 feet;
- lowering of floor area ratios (FAR) from the existing 6:1 and 4.8:1, to 2.8:1, 2:1, and 1:1. The area proposed as a historic district would be limited generally to 2:1 FAR in the visitor retail area facing Grant Avenue, and 1:1 FAR in the residential neighborhood commercial areas in the western and northern parts of the district. Additional floor area would be permitted in these areas up to the height limit for housing construction. Smaller eastern portions of the district proposed for community business are recommended for 2.8:1 FAR;
- a proposed historic district, under Article 10, containing "the major areas of significant buildings with Chinese detailing on Grant Avenue and Waverly Place, alleys such as Ross and Spofford, as well as portions of the east-west cross streets (i.e. Sacramento, Clay, Washington, and Jackson Streets)." This proposed district is smaller than the historic district boundary recommended by the Landmarks Board, which extends to both sides of Stockton to the west and includes blocks of Commercial and Clay Streets east of Kearny Street and incorporates buildings of historical importance to the community, but which may not be decorated with "Chinese detailing;"
- individual landmark designations, under Article 10, for significant buildings on Stockton, Kearny, and Jackson Streets that are outside of the proposed historic district;
- preservation policies for existing housing and the extension of existing protection for residential hotel units to apartment units; and
- design criteria for bulk and massing of new construction to protect the small scale, pattern, and relationship of existing blocks in Chinatown.

In general, the Chinatown Plan proposed by the Department of City Planning will provide substantial new protection for one of San Francisco's most important architectural, historic, and cultural areas. If the changes to Article 10 proposed above and

in the chapter on recommendations are made in advance of the designation of the proposed historic district, buildings in the historic district will be protected from demolition and inappropriate alterations. However, if these changes are not made before the Chinatown Plan is approved by the Board of Supervisors, the historic and architectural resources of the area will not be adequately protected.

There are many buildings that contribute to the character of Chinatown and that are architecturally and historically significant outside of the historic district proposed by the City, especially in the Stockton Street corridor and east of Kearny on Clay and Commercial Streets. While the department proposes to recommend designation of a number of individual landmarks outside of the historic district, its proposed designations omit many buildings that are significant to the character of Chinatown.

The differences between the Department of City Planning's proposed historic district boundary and the boundary supported by the Landmarks Board and neighborhood and private preservation groups are evidence that historic districts are not adequately defined in Article 10. If Article 10 adequately defined the characteristics, purposes, and boundary criteria of historic districts, it would be easier for the City and neighborhood groups to delineate boundaries that met these definitions. Similarly, if a new category of "conservation district" were established with different characteristics or purposes than historic districts, perhaps some of the area of Chinatown would qualify for such districts in lieu of the broader historic district boundary. In any event, historic and architectural resources outside of the Planning Department's proposed historic district boundary will be subject to some economic pressures for demolition or additions, even with lower height and bulk limits, and cannot be adequately protected without a more detailed design review process provided by Article 10.

The Chinatown Plan does not provide a specific list of buildings to be protected by the historic district or the individual landmarks designations recommended, and does not explicitly provide policies to guide applications for demolition, replacement, or alteration of such structures.

The Department of City Planning should consider extending the type of protection provided for buildings in the Downtown Plan to Chinatown, with lists of significant and contributory buildings, designated historic and/or conservation districts with standards and criteria for permits that are more specific than existing historic district ordinances, specific policies and criteria for alteration of designated individual buildings, and other provisions of Article 11 for avoiding a "taking" and demolition by neglect. Alternatively, the final Chinatown Plan

should be accompanied by revisions to Article 10 that conform generally with Article 11 (to include ratings of buildings by all 13 criteria of significance), and a specific ordinance to designate specific buildings as landmarks and a historic district ordinance, with purposes, standards, and criteria similar to the more detailed form of the conservation districts in the Downtown Plan.

c. The Civic Center Comprehensive Plan

(City Planning Commission Resolution No. 7216, July 25, 1974)

The purpose of the Civic Center Plan is to guide development in the Civic Center area. It articulates objectives and policies that apply to future development, and defines four broad activity categories: administrative, entertainment-cultural, open space, and parking. Objective 1 is to "maintain and reinforce the Civic Center as the symbolic and ceremonial focus of community government and culture." Policy 1 for this objective is to "maintain the formal architectural character of the Civic Center," and states, "Whenever possible, existing classic buildings should be conserved and rehabilitated rather than replaced. New buildings should be designed to complement the Center's existing architectural character." Other objectives and policies address uses, activities, access, circulation, parking, and general urban design matters.

Several major parcels of publicly and privately owned land in the Civic Center appear to be ideal sites for the growth of new facilities for government, entertainment, and the arts, such as the southeast and northeast corners of Larkin and Grove Streets, the northeast corner of Larkin and McAllister, the northwest corner of Polk and McAllister, and the southeast corner of Van Ness Avenue and Grove Street. This plan provides very little guidance for controlling the design of new development on these sites, in the event they are developed for the uses identified in the plan. The plan gives no information on the architectural or historic significance of the Civic Center or the individual buildings within it. There is no description of the original Master Plan for the Civic Center, developed by a committee of San Francisco's most famous architects, including John Galen Howard, Fred H. Meyer, and John Reid, Jr. Other architects, including G. Albert Landsburg, Willis Polk, Edward H. Bennett, George Kelham, and the firm of Bakewell and Brown had a significant influence on the Civic Center plan and many of its Beaux Arts buildings, in addition to this committee. The result is one of the finest examples of the City Beautiful Movement and Beaux Arts design in the nation. The core area of the Civic Center is listed on the National Register of Historic Places as a historic district, but this listing provides very little protection for the buildings, unless federal actions would jeopardize the structures. The National Register provides no

guidance for the design of new structures on suitable sites in the Civic Center.

While it is unlikely that any of the major publicly owned Civic Center buildings will be threatened with replacement, at least two buildings have been threatened in the past few years with significant alterations that would have been inconsistent with the original Master Plan and would have damaged the integrity of the original buildings. The Herbst Theater in the Veterans Memorial Building, which was the location of the signing of the United Nations Charter, was proposed to be demolished for expansion of the Museum of Modern Art, and major double ramps for handicapped access to City Hall were proposed on Polk Street, which would have substantially altered the principal facade of the building. More specific policies, guidelines, and criteria to preserve the character and details of the major Beaux Arts monuments of the Civic Center would have prevented these ill conceived proposals, and would have avoided substantial public controversy. The landscaping and paving that now exists on top of the Civic Center underground parking lot is a dramatic departure from the original Beaux Arts plan. There may be opportunities in the future for restoring this plaza to its original design; this should be based on an updated Master Plan for Civic Center, now being developed by the Planning Department.

The Planning Department, the Landmarks Board, the Art Commission, and the City Architect should completely revise and update the Civic Center Master Plan as a detailed guide for the acquisition of property for government, entertainment and cultural uses, for control of new development to ensure compatibility with the original Master Plan for the Civic Center, and detailed guidance for public improvements and the preservation of existing significant and contributory buildings in the Civic Center.

Furthermore, the National Register nomination for the Civic Center should be converted into a local historic district ordinance under Article 10 of the Planning Code, so that the Landmarks Board and Planning Commission will have more authority to review and approve all proposed changes and new development in the Civic Center area, including proposed changes to the interior of public buildings.

d. Neighborhood commercial rezoning.

The Planning Department has prepared a comprehensive proposal for rezoning all neighborhood commercial areas of the city, dated February 1985. This report is intended to supersede many special use district controls for neighborhood strips that were imposed as interim controls in response to neighborhood reaction against the proliferation of franchise stores, banking

institutions, offices, and other commercial uses. There have also been frequent reactions against the demolition of architecturally interesting buildings and against changes in scale and character of neighborhood commercial areas that have provided a town-center quality to some neighborhoods.

The Neighborhood Commercial Zoning report recommends changes to the commerce and industry element, the transportation element, and the residence element of the Master Plan; detailed changes to Article 7 of the Planning Code; changes to other sections of the Planning Code in conformance with the changes to Article 7; and provides Planning Code map amendments. In general, these amendments are designed to slow the rate of change in neighborhood commercial areas, to maintain neighborhood-oriented commercial uses, to minimize the dislocation of existing affordable housing or commercial uses, and to give the Planning Commission more control over changes through the conditional use review process.

These goals would generally help protect architectural resources in such areas, but historic preservation is not a strongly articulated policy of the proposal. There is no attempt to identify or define the architectural resources in neighborhood commercial areas and no explicit policies against the demolition or inappropriate alteration of architecturally significant structures are set out. Historic preservation is generally treated as an adjunct of urban design. For example, the proposed amendments to the Master Plan do not provide for a policy for preserving the architecturally or historically significant structures in such areas as a separate policy, instead it relies on the general historic preservation policies in the urban design element and commerce and industry element. Therefore, amendments to the Master Plan to include an historic preservation element would add to the specificity of policies for historic resources in the neighborhood commercial areas.

Virtually all of the references to historic or architectural preservation in the proposal are found in the recommended changes to the commerce and industry element of the Master Plan (which is substantially more specific than any of the provisions of other Master Plan elements). Policy 6 of the proposed amendments is designed to "Promote high quality urban design on commercial streets." Within this section, three and a half pages of urban design guidelines are provided for site layout; scale, height, and bulk; frontage; architectural design; materials, details, and rooftop mechanical equipment; signs; and landscape and street design. Historic preservation does not even rate a sub-category of these guidelines. The architectural design sub-category provides the following guidelines related to architectural preservation:

The essential character of neighborhood commercial districts should be preserved by discouraging alterations and new development which would be incompatible with buildings which are architecturally significant or which contribute to the scale and character of the district as a whole. Specifically, the facades and building lines of existing buildings should be continued, and the details, material, texture, or color of existing architecturally significant or distinctive buildings should be complemented by new development (no mention of alteration or removal of elements on the significant building),

Existing structures in sound or rehabilitable (sic) condition and of worthwhile architectural character should be reused where feasible to retain the unique character of a given neighborhood commercial district.

The details sub-category has the following guidelines:

Individual buildings in the City's neighborhood commercial districts are rich in architectural detailing, yet vary considerably from building to building Despite their stylistic differences, Victorian, Classical, and Art Deco buildings share some design motifs. Vertical lines of columns or piers, and horizontal lines of spandrels or cornices are common to many styles, as are moldings around windows and doors. These elements add richness to a flat facade wall, emphasizing the contrast of shapes and surfaces.

A new building should relate to the surrounding area by displaying scale and textures derived from existing buildings. Nearby buildings of architectural distinction can serve as primary references (here again, the historic buildings act as references to new development or the character of the street, but are not required to be preserved for their own values).

One of the greatest omissions in these guidelines occurs in the description of physical characteristics of the property and district which should be considered in the design of new development. This Section lists six factors, but the architectural or historic significance of structures or the area is not among them.

Historic preservation is generally absent from the proposed revisions to the Planning Code, recommended to carry out the policies of the neighborhood commercial rezoning. Section 121 proposes the addition of the criteria of Section 303(c), the conditional use criteria, so that, "The mass and facade of the

proposed structures are compatible with the existing scale of the district," and so that "The facade of the proposed structures is consistent with design features of adjacent facades that contribute to the positive visual quality of the district."

In the urban design guidelines for signs and the proposed Planning Code amendments for signs in neighborhood commercial districts, there is no mention of the need to control signs on architecturally significant structures, or any recognition that signs can destroy the integrity of such structures.

The neighborhood commercial rezoning proposal features only a minor reference to historic preservation, and probably a small measure of additional legal authority to control alterations or additions in such commercial districts. This protection is very limited, and there is almost no certainty that historic preservation will be given any priority over other considerations in the conditional use process, the only mechanism provided for controlling changes. In the final rezoning, or in implementation measures for the proposed historic preservation element, these weaknesses in the preservation aspects of neighborhood commercial rezoning should be corrected. The proposed amendments to the commerce and industry section for these districts should reference a new historic preservation element of the Master Plan to control or prohibit demolition or incompatible alteration of architecturally significant structures. The urban design guidelines should be amended to require consideration of architecturally and historically significant buildings and areas in the design of new development. Guidelines for architectural design, details, and signs should not treat historic preservation merely as a reference for new development, but as an intrinsic value to be protected on its own. New criteria should be added to Section 303(c) to require the Planning Commission to consider the effect of any proposed new construction, change of use, addition, or alteration in a neighborhood commercial district, on existing architecturally or historically significant buildings or landmarks. New criteria should be added to the proposed revisions of the sign controls to prevent the addition of signs that would adversely affect the character of architecturally significant structures. Ideally, the historic and architectural resources of each of the districts should be surveyed, designated, and controlled through a revised Article 10 process, either as historic districts, where warranted, or as individually designated buildings.

e. North of Market residential special use district

Permanent rezoning controls for North of Market were approved by the Board of Supervisors on March 25, 1985, and approved by the Mayor on March 28, based on a North of Market Rezoning Study prepared by the Planning Department in March 1983.

In general, the rezoning reduced height and bulk limits in an area bounded by Post, Polk, McAllister, and Mason Streets to 80 feet; with heights permitted to 130 feet between Post, Leavenworth, O'Farrell, and Mason and 120 feet, between Eddy, Leavenworth, McAllister, and Mason. All development proposals exceeding 40 feet must be approved as a conditional use.

The first draft of this rezoning proposal did not include any policies or controls for historic preservation, although it included a map of buildings rated by the City's 1976 Architectural Survey. Local non-profit neighborhood and preservation organizations successfully lobbied the Department of City Planning for the inclusion of such policies and controls.

The purposes of the new zoning now state:

In order to protect and enhance important housing resources in an area near downtown, conserve and upgrade existing low- and moderate-income housing stock, preserve buildings of architectural and historic importance and preserve the existing scale of development, maintain sunlight in public spaces, encourage new in-fill housing at a compatible density, limit the development of tourist hotels and other commercial uses that could adversely impact the residential nature of the area, and limit the number of commercial establishments which are not intended primarily for customers who are residents of the area, the following controls are imposed in the North of Market residential special use district.

In making determinations on applications for conditional use, required for uses located within the North of Market area, these purposes must be considered by the Planning Commission, in addition to the standard criteria of Section 303(c) of the Planning Code.

Most of the existing buildings in the area are between 40 and 80 feet in height and were built between 1906 and 1920, during the period of rapid expansion of residential hotels associated with the Pan-Pacific International Exposition. A private consultant has prepared a National Register nomination for an area larger than the rezoning boundaries, but this nomination was rejected by the State Historic Resources Commission because of opposition to the historic district from the North of Market Planning Coalition, organizations of property owners, and members of the Board of Supervisors. While the area has several individually important buildings, like St. Boniface Church, the Alcazar Theater, and important residential hotels, most of the structures are "contributory" in nature, or would contribute to the significance of a historic district but would not qualify for the National Register on their own merits.

The preservation purpose of the new zoning, the lowering of height and bulk limits, and the conditional use process will likely remove much of the economic incentive to demolish historic buildings and will allow the Planning Commission to preserve structures that can be documented on a case-by-case basis to be "of architectural and historic importance." However, the rezoning does not include a list of such buildings, a map of buildings to be preserved, or any definitions or more explicit standards that would provide predictable assurance that the buildings will be preserved. The rezoning ordinance is also silent with regard to control of alterations of important buildings that might damage the architectural character of the buildings that are preserved. This ambiguity as to how the preservation policies will be carried out is especially troubling in light of the number of buildings that are only of contributory architectural significance. The Planning Commission has been reluctant to provide protection to such buildings in other areas of the City, except in historic or conservation districts.

The Department of City Planning, the Landmarks Board and private historic preservation groups, working with neighborhood organizations, should identify boundaries of a conservation district for the North of Market area for the purpose of architectural and historic preservation. All of the significant and contributory buildings in this area should be listed, with policies for preservation, rehabilitation, replacement, and demolition provided as appropriate to the quality of each structure. A more detailed review process similar to that for the downtown conservation districts should be established for the control of permits for alteration, demolition, and new construction. The Heritage architectural survey should be utilized for this purpose, consistent with the Department of City Planning's independent review process for such surveys, and the existing National Register nomination for the area should be examined for applicability in establishing the conservation district boundaries. Because of the importance of this area for affordable housing, neighborhood-oriented retail and social services, and, in the eastern portion, theaters and hotels,; the architectural controls for the area should be sensitive to these other public values. Alternatively, the preservation controls and review process used in the Downtown Plan should be extended to the North of Market area to control both individually significant structures and smaller conservation districts for certain key blocks.

Neighborhood groups, property owners, and members of the Board of Supervisors should reconsider their positions on the National Register nomination, considering the stabilizing effects of the new zoning controls. A National Register Historic District for this area could make available substantial tax incentives for rehabilitation of the residential hotels in the

area, as described above, without adding any new controls over the use of the properties.

f. Northeast Waterfront Plan

This plan was adopted as part of the Master Plan by the Planning Commission in January 1977, and was amended in 1980. The plan was the product of an extensive interagency collaborative planning process as a special area plan of the Bay Conservation and Development Commission, working with the Department of City Planning, the Port Commission, and several other federal, state, and local agencies and neighborhood and special interest groups. As such, it not only established a model for other special area plans in the Bay Area, but for other coastal areas of the country. Because of this collaborative process, many agencies and interest groups have a stake in the plan's implementation, and changes in it are not easily made.

The Northeast Waterfront Plan has several goals, objectives, and policies that relate to historic preservation, including a goal to "preserve and enhance the unique character of the area, and take advantage of the unique economic opportunity provided by San Francisco Bay," and the urban design policies to "retain older buildings of architectural merit or historical significance to preserve the architectural and historical character of the waterfront and ensure the compatibility of new development;" "maintain the physical prominence of the Ferry Building;" and "consider retention of the arched building structures which exist at the main entrance to most piers and which add an important character to the Embarcadero." However, a few other policies have created some conflicts with goals for historic preservation, such as "preserve the bulkhead buildings and bulkhead arches on Piers 3, 1 1/2, 1, and 24" (only); and "remove all or portions of dilapidated piers, bulkhead wharves, and bulkhead buildings which cannot be used in order to improve shoreline appearance, bay views, and access to the bay." By calling for preservation of only these specific piers, and the removal of others, the plan's policies for the other pier bulkhead structures are unclear. All of the pier bulkheads were found eligible for the National Register of Historic Places after the controversy over the development of Pier 39, and some have since been preserved by actions of the Port Commission and the Redevelopment Agency.

The height, bulk, and use controls in the Northeast Waterfront area north of Broadway generally support retention of existing warehouse buildings that have not been included as part of the Northeast Waterfront historic district. However, this plan does not identify buildings for protection or provide any review of alterations of buildings that are significant, if they are located outside of the historic district. The Department of City Planning and Landmarks Board should review the findings of Heritage's extended survey of architecturally or historically significant buildings in this area to determine if individual

structures should be designated for landmark status outside of the Northeast Waterfront historic district.

g. Rincon Hill Plan

The Rincon Hill Plan was adopted by the Planning Commission as a part of the Master Plan in November 1984, and an ordinance adopting new controls as a special use district was adopted by the Board of Supervisors on November 5, 1985. The primary objective of the plan and special use district is to transform an unattractive and under-utilized environment close to the downtown into "an urbane, new residential neighborhood." The plan allows high density mixed-use construction, with a modest amount of office use and an emphasis on market rate housing. It increased height and density limits for parts of the area, and proposes street improvements and open space.

The plan describes the history of development in Rincon Hill and provides a chapter of objectives and policies for historic preservation. The preservation objective of the plan is:

To preserve and adaptively reuse those buildings in the area which have particular architectural or historical merit or which provide a scale and character of development consistent with the plan.

The plan identifies eight individual structures of historic or architectural merit, and describes policies to guide decisions of the Planning Commission regarding their preservation or alteration. All of the structures identified by Heritage from its expanded architectural survey have been included in this chapter. However, some of the policies of the plan provide less protection than the policies for significant buildings in the Downtown Plan.

In spite of extensive discussion of preservation policies in the plan, neither the purposes of the Rincon Hill special use district ordinance, nor any reference elsewhere in the ordinance mentions preservation of architecturally or historically significant buildings. There are no additional criteria added to Section 303(c) to require the Planning Commission to consider the preservation policies of the new Master Plan element for this area, although existing Section 303(c)3 requires that "such use or feature as proposed will comply with the applicable provisions of this code and will not adversely affect the Master Plan." Without any mention of historic preservation policies in the ordinance, and such permissive language in the conditional use requirements, it is not certain that the Planning Commission will require preservation of the eight buildings identified in the plan for preservation.

The Department of City Planning should designate each of the seven non-landmark buildings identified for preservation in the

Rincon Hill Plan as city landmarks under a revised Article 10, with policies, standards and a review process similar to those found in the Downtown Plan for significant buildings.

h. South of Market Plan

The South of Market proposal for citizen review was released by the Department of City Planning in June 1985. Hearings on the plan were held by the Planning Commission in late 1986. Interim controls were established by the Board of Supervisors in 1984 for the western portion of this planning area, establishing low floor area ratios and other restrictions to prevent speculative development until a new plan can be approved.

The major thrust of the South of Market Plan is to preserve existing affordable housing and small businesses and to encourage light industrial, home, and business service industries, along with entertainment. Preservation of existing architecturally or historically significant buildings is not one of the principal goals of the plan, even though this area contains one of the largest collections of early brick warehouse and commercial structures outside of Jackson Square, in addition to a number of other significant buildings. While several policies and principal features of the plan list preservation of uses and existing building stock (and are, therefore, complementary with historic and architectural preservation), historic preservation is not included as a goal for its own value.

"Preserving the architectural character of the South of Market (SOM) by identifying specific landmark-quality buildings for preservation and establishing urban design guidelines for new development" is listed as one of the ways the plan proposes to improve neighborhood livability.

The chapter of the South of Market Plan on neighborhood livability has objectives and policies for historic preservation, including:

Policy 3: "Preserve the architectural character and identity of South of Market residential and commercial/industrial buildings,"

Policy 4: "Preserve individual architecturally and/or historically significant buildings which contribute to the area's identity, give visual orientation, and which impart a sense of continuity with San Francisco's past;" and

Policy 5: "Preserve areas which contain groups of buildings of historic, architectural, or aesthetic value and which are linked by important historical or architectural characteristics."

The implementation actions suggested to carry out these policies include the establishment of architectural design

guidelines for the rehabilitation of existing buildings to protect their character; recommending designation of the identified buildings as city landmarks; conditional use approval of a higher use, when necessary to make rehabilitation of the significant structures feasible; relief from on-site parking and loading requirements when necessary; and designation of a historic district for the Second and Townsend Street group of early brick warehouses.

Each of these policies and implementation actions, when combined with the overall lower density zoning controls for the South of Market area, should go a long way toward protecting the most important South of Market structures and the proposed historic district. However, the protection afforded to buildings under the current Article 10 are not sufficient to guarantee protection in the same way that Article 11 of the Downtown Plan does. Before the proposed rezoning of the South of Market area is drafted for implementation of the plan, either Article 10 should be upgraded to provide the same level of protection for buildings as Article 11 or the South of Market ordinance should incorporate its own list of significant and contributory buildings, controls for demolition and alteration of these buildings, and a conservation district for the area now proposed as a historic district. The boundaries of the proposed historic district should be amended to conform to the boundaries of a proposed National Register Historic District, found eligible for the National Register by the National Park Service and the State Office of Historic Preservation as part of the studies of I-280 transportation alternatives.

There will be no separate implementation ordinance or Master Plan Element for the South of Market Plan, rather implementation amendments will be made to existing sections of the Planning Code. If possible, the policy document adopted by the Planning Commission should contain or be amended to provide specific findings, objectives and policies for architectural and historic preservation. This would be helpful as legal background for Planning Commission decisions on conditional use review and for the Landmarks Board's actions to designate groups of significant buildings and the historic or conservation district.

i. Van Ness Avenue Plan

A proposal for citizen review for a Van Ness Avenue Plan for conservation and development was issued by the Department of City Planning in May 1983. The department is now working on a final plan and rezoning ordinance for this area.

The major focus of the plan is to increase the density of market rate housing and commercial activity along the avenue as the auto-related existing uses voluntarily relocate to other areas. Van Ness Avenue, along with Rincon Hill and Mission Bay,

is viewed by the Mayor and the Department of City Planning as a primary development opportunity area for increasing the City's supply of housing.

The Van Ness Avenue Plan proposes height limits from a high of 130 feet between McAllister and Broadway Streets to 40 feet at the Aquatic Park terminus of the avenue. Several large new mixed residential-commercial developments are now being completed on the avenue that were designed under previous rules, but they illustrate the dramatic change in scale that is generally consistent with the proposed plan.

In order to maximize the number of housing units on the avenue (a primary policy of the plan), it eliminates housing unit density controls. Floor area ratios are generally lowered from the existing ratios to 7:1 in the 130 foot areas, 4.5:1 in the 80 foot areas, and maintained at 3.6:1 north of Green Street, which is in a 65 foot height limit area to Chestnut, and 40 foot north to Aquatic Park. The height limits, bulk design controls, and FAR limits, combined with the conditional use review powers of the Planning Commission, are ways the plan is expected to be implemented.

Eighteen of the plan's 60 pages are devoted to preservation of architecturally significant buildings. With an objective to "preserve the fine architectural resources of Van Ness Avenue," the following policies are proposed:

Policy 1: "Prevent demolition or inappropriate alteration of architecturally significant buildings;"

Policy 2: "To the extent necessary to achieve preservation, allow relaxation in the residential use requirements and in the parking requirements."

Thirty-eight significant buildings were identified in the proposed plan, and general guidelines for preservation, partial preservation, and alterations were provided for each.

While the other preservation policies of the plan are quite strong and specific, no implementation measures are suggested other than the economic incentives provided through exemptions from the housing use and parking requirements provided to encourage rehabilitation. The plan should identify more specific preservation policies and alteration standards, patterned after those in the Downtown Plan, and should either incorporate such standards and guidelines in the zoning ordinance implementing the plan or process a group designation of properties under Article 10, after Article 10 is upgraded to the standards of Article 11.

Van Ness Avenue and the side streets adjacent to it contain some of the best auto-oriented architecture anywhere in the

country. Few cities have had the occasion to completely rebuild a section of the city at the time when the automobile was becoming the major mode of transportation, as San Francisco did after the fire. The auto-oriented showrooms, garages, and service buildings, representing all of the major auto companies of the early twentieth century, should be protected, perhaps as a thematic historic or conservation district incorporated in the plan.

The Plan's preservation policies should address the buildings of significance in the planning area, plus those between Franklin and Polk Streets that could be affected by increased development in the plan area. The plan should not protect just those facing Van Ness Avenue as the first draft of the plan's earlier policies did.

Since the Van Ness Avenue Plan is nearing final completion and rezoning, first priority should be given by the Department of City Planning to upgrading the preservation standards, criteria, and list of buildings to be protected. The ordinance should incorporate goals, objectives, and strong standards, rather than leaving these to the Master Plan element or later designation under Article 10. It is important that preservation policies and controls be processed concurrently with the comprehensive policies and controls for implementation of a plan, so that the Board of Supervisors and the public can see the plan comprehensively when it is enacted. Separate procedures for designation and protection of architecturally significant buildings, either serially under Article 10 or as a part of a historic or conservation district, are politically more difficult to win property owner or Board of Supervisors support for. If enough time cannot be provided for lengthy hearings and public notice on all buildings affected in the time frame for the Van Ness Avenue Plan approval, a section of the ordinance like Section 1105 of the Downtown Plan could be added to permit property owners and others to challenge the validity of the designations after the interim controls are in place for these structures.

7. STATE HISTORIC PRESERVATION LEGISLATION

A number of mechanisms are provided by California law which should be examined for their potential effectiveness in promoting preservation goals in San Francisco. Major incentives and regulations which could be used to implement recommendations of the preservation element are summarized below.

a. Property tax reduction

California law provides several ways for owners of historic properties to voluntarily restrict the use of their properties in return for a reduction in property tax liability. At least two of these mechanisms, the Mills Act and the Open Space Easement Act of 1974, would require the direct involvement of the City to trigger their preservation incentives. A third, the California Conservation Easement Act, can be activated by the involvement of either a governmental entity or a non-profit organization. These property tax incentives can be ways to implement the preservation element through the voluntary placement of restrictions. The two easement acts could result in income and estate tax savings as well. These are discussed later in this report. In addition, strict regulation of historic property imposed by local government without owner consent can result in the lowering of property taxes to offset the loss of speculative value of the property. Section 402.1 of the California Revenue and Taxation Code states "In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. Such restrictions shall include, but are not limited to: (a) zoning; (b) recorded contracts with governmental agencies ...; (c) permit authority of, and permits issued by, governmental agencies exercising land use powers concurrently with local governments ...; (d) development controls of a local government in accordance with any local coastal program; and (e) development controls of a local government in accordance with a local protection program"

1. The Mills Act ¹⁰

The legislative body of any local government in California may contract with owners of "qualified historical property" within its jurisdiction to restrict the use of such property in exchange for a property tax reduction. The local government may require the property owners to pay fees to cover the reasonable costs of administering the program. The owner must agree by contract to preserve, maintain, and, if necessary, restore and rehabilitate the property.

"Qualified historical property" eligible for such contracts is defined to include any privately owned property which is not exempt from property taxation and which is recognized in one of the following ways: (1) listing in the National Register of Historic Places or in a registered historic district; (2) listing in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.

The contract must be binding on successive owners of the property and have a term of at least 10 years. Each year the contract is automatically renewed for another year unless either party gives advance notice of non-renewal. Rezoning constitutes notice of non-renewal on the part of the City. Because of the automatic renewal provision an owner must wait almost 10 years before altering the property after notice of non-renewal is given.

If an owner does not maintain the property as agreed, the City may sue to enforce the agreement. The court may order the landowner to perform the acts required under the contract or enjoin the owner from violating the contract terms. As an alternative to going to court, the City can cancel the contract; however, a public hearing must be held before cancellation. Upon cancellation an owner must pay to the state a fee amounting to 12.5 percent of the fair market value of the property without the restriction.

Property which is subject to a contract described above is assessed on the basis of a "capitalization of income" formula instead of the fair market value method. In simple terms, the value of the property is computed from the rental value of the property, taking into account the contract restrictions less "necessary and ordinary expenses" in producing rental income. This amount is then divided by a "capitalization rate" based on the interest rate, property tax rate, and other factors including a "historical property risk component." Local assessors in California are generally familiar with this assessment method.

Studies of the impact on the tax rate in Portland, Oregon of that state's 15-year tax freeze program for historic properties show that the overall increase in the tax rate of the average homeowner to make up for any loss in overall tax revenues is negligible. The studies further show that if the opportunity to freeze historic property value results in the restoration and preservation of more historic property, and this in turn increases the tourist trade and income of the community, then the impact of any small increase in the consolidated tax rate is further diminished.¹¹

San Francisco should examine the use of Mills Act contracts to encourage the rehabilitation and preservation of certain city landmarks, properties within historic districts or other designated resources. Contract language could be developed by the city to accomplish specific conservation goals depending on the type or location of the resources and the level of protection desired. Such an incentive may be more effective in encouraging preservation of certain types of resources in the city than others, depending upon location of the historic property, its value, current use or length of ownership. The city could use its discretion as to where this incentive would be most effective or where it is needed. The Proposition 13 restriction on assessment increases makes this incentive somewhat less effective overall, but it can be very attractive when ownership of a historic property changes since under Proposition 13 such a change triggers automatic reassessment of the property for tax purposes.

2. Open Space Easement Act of 1974 ¹²

Open space easements are defined as interests granted by deed or other legal document that impose express limitations on the use of open space for the purpose of preserving its natural, scenic, historic, or cultural value for public use and enjoyment. If certain requirements are met, such limitations will result in a reduction in property tax assessment on the basis of the "capitalization of income" formula mentioned above in connection with Mills Act contracts.

The act applies only to those historic properties that are essentially unimproved open space areas that are protected by a local government's land use plan. While it may apply to archeological sites and other undeveloped historic areas or cultural landscapes, it does not apply to actual structures or buildings.

The following statutory requirements apply to the creation of open space easements: (a) there must be a legal document such as a deed or will in which the property owner states that he or

she will retain the property in its open space condition; (b) it must be expressly stated in the instrument that the covenant will "run with the land," i.e. bind successive owners for the desired term, ranging from 10 years to perpetuity; (c) the easement may be granted only to local governments or tax-exempt non-profit organizations with open space preservation as a stated purpose; (d) the property must be located in a jurisdiction that has an open space element in its general land use plan; (e) the local governing body must vote to accept the easement or approve it for acceptance by a non-profit organization - before approval may be given the local governing body must find that the easement is consistent with its Master Plan and that acceptance is in the public interest; and (f) the easement document must be recorded in the County Recorder's office.

An open space easement may be granted in perpetuity or for a term of not less than 10 years. If a term easement is granted, certain procedures for renewal and abandonment must be followed: (a) open space easements granted for a limited term are automatically renewed each year unless either party to the easement gives notice of non-renewal; (b) non-renewal by a non-profit organization easement holder must be approved by the local government; and (c) once notice of non-renewal is effective the easement will expire at the end of the stated term, in no case less than nine years.

The only way an open space easement can be terminated other than by expiration of the stated term following a notice of non-renewal is by abandonment. The owner of the property subject to the easement may petition the local government to allow abandonment of the easement subject to a strict set of procedures enumerated in the act.

Once an open space easement is accepted, the local government may not issue a building permit that would violate its terms. The local government or any local landowner may sue to stop construction that is inconsistent with the easement provisions.

This means of implementing the preservation element would require the City to take certain actions to encourage voluntary donation. In this regard, the City would have to include historic and cultural preservation goals in its open space element and either accept an easement or approve it for acceptance by a non-profit organization when a proposed easement donation is found to be consistent with the City's Master Plan.

3. California Conservation Easements Act of 1979 ¹³

The California Conservation Easement Act of 1979 could similarly serve as a mechanism for implementing the preservation element of the City's Master Plan. Unlike the Open Space Easement Act, this act applies to the protection of structures and buildings as well as to open space and requires less government involvement.

The Conservation Easements Act defines a conservation easement as any limitation voluntarily created by a property owner in a deed, will, or other legal document for transferring property that requires all owners, present and future, to retain the property in its scenic, historic, or open space condition. To be valid and enforceable, conservation easements must be granted to tax-exempt non-profit preservation organizations qualified to do business in California or to state or local government entities authorized to acquire such easements. The easement document must contain some expression of intent to bind future owners and must be recorded in the office of the County Recorder. So long as these requirements are met, all successive owners will be bound by the restrictions or obligations of the conservation easement.

As with the Mills Act and the Open Space Easements Act, easements granted pursuant to the Conservation Easements Act can result in a reduction in property taxes. The method for calculating a reduction is slightly different, however. The assessor is required to equate the value of the restricted property to the value attributable to permitted uses of the property. Thus, to the extent that a conservation easement causes a decline in property value, the owner is entitled to a reduced assessment.

Unlike the Open Space Easement Act, the Conservation Easements Act does not require any special actions by the City. While the City Landmarks Board could accept such easements, their donation to a non-profit preservation organization could be encouraged instead. The Foundation for San Francisco's Architectural Heritage (Heritage) has for many years accepted donations of "facade" or preservation easements from historic property owners in San Francisco. Whether a City agency should also accept preservation easements, guided by the Landmarks Board or Department of City Planning, should be evaluated as part of the implementation measures for the preservation element. Since enforcement problems are often mentioned in relation to easements, consideration of which entity would have the most authority in this area may be important.

b. Income tax savings

1. Gifts of easements ¹⁴

The donation of an easement to the City or a non-profit preservation organization pursuant to either the Conservation Easement Act or the Open Space Easement Act can reduce the income tax liability of historic property owners as well as their property tax bills.

A state income tax deduction is allowed to individuals and corporations who make "qualified conservation contributions" as defined by federal tax law. Such contributions include gifts of easements granted in perpetuity to non-profit organizations or government agencies for the purpose of preserving structures listed on the National Register of Historic Places or significant buildings located in registered historic districts. Registered historic districts are those that are either listed on the National Register or are locally designated historic districts that have been certified by the National Park Service. Generally, a gift of a conservation easement or open space easement will be eligible for this deduction.

As in the case of the property tax reduction incentives discussed above, the City could further the goals of a preservation element by encouraging the voluntary placement of preservation restrictions through easement donations. Accepting the easements or encouraging their donation to another entity would remove a common obstacle in California to easement donation -- finding a willing donee. In addition, and perhaps more importantly, the City could encourage the listing of its historic resources on the National Register of Historic Places along with the designation of local historic districts. This would allow the incentive of an income tax break to work more freely.

2. Estate tax savings ¹⁵

The grant of a conservation easement has still a third possible tax savings for owners of historic properties. Because California estate tax is imposed on a portion of a decedent's estate as computed under federal law, the state has in effect allowed the charitable deduction granted under federal estate tax law. Under federal law a deduction is allowed for the value of a conservation easement transferred to a government agency or a qualified non-profit organization.

The City could, by acting as an easement donee or otherwise encouraging easement conveyances, allow this incentive, along with those income and property tax savings discussed above, to

encourage the placement of voluntary restrictions through gifts of conservation easements.

c. Building code relief

1. The State Historical Building Code ¹⁶

Building codes often present obstacles to preservation and rehabilitation. Assessment of structural adequacy on the basis of modern building code requirements often means that historic buildings "fail" inspections since there is no consideration of the possible superiority or equivalency of building materials or techniques used in the past.

The State Historical Building Code (SHBC), first adopted in 1979, is a variant building code providing alternative standards for repairs, alterations, and additions necessary for the preservation of qualified historic structures. The code is located in Section 8 of Title 24 of the California Administration Code. For use in conjunction with traditional building codes when a historic structure is involved, the code allows alternative methods of attaining fire and safety standards without sacrificing the historic character of a building. Generally, building owners can enjoy substantial cost savings when rehabilitating a historic structure under the SHBC.

In order to use the SHBC, the structure under consideration must be designated as a "qualified historical building or structure" which is defined as "any structure or collection of structures, and their associated sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or state (or national) governmental jurisdiction..." (California Health & Safety Code, Section 18955.) Consequently, the SHBC is available to all buildings listed on the National Register, designated as City landmarks, located within historic districts, and otherwise identified by the City. In fact, identification in an official City survey or nomination to the state or National Register appears to be sufficient.

Under the law as originally enacted, state officials and local building authorities were permitted, but not required, to adopt and enforce these alternative standards within their jurisdictions. The law established a SHBC Advisory Board to coordinate and advise local building authorities and state agencies.

Effective July 1, 1985, amendments made the SHBC binding on all state and local agencies. The SHBC Board, renamed by the new law to delete the word "Advisory", is now acting as a review body

to state and local agencies in matters of interpretation, administration and enforcement of the SHBC. The board's decisions will be published.

The City should make a special effort to encourage the successful application of the SHBC through workshops, training sessions, and manuals for its staff and through a program to inform the public as well as the owners and developers of historic properties of the special considerations and potential cost savings in meeting building code requirements. Since the SHBC Commission will act as an administrative appeals body of last resort, only after all local appeals have been exhausted, the City needs to establish more formal administrative guidelines for the implementation of the SHBC and the process of appeals based on the SHBC. These administrative guidelines should be developed in cooperation with the Landmarks Board, the Planning Department, the Bureau of Building Inspection and Permits, and the American Institute of Architects Codes and Preservation Committees.

2. The Uniform Building Code ¹⁷

Although not as important to historic buildings in California since the State Historical Building Code has become mandatory, it is interesting to note that of six model building codes generally used in the United States, most jurisdictions in California follow the Uniform Building Code (UBC) published by the International Conference of Building Officials. Section 104(j) of the UBC encourages code enforcement officials to consider historic or architectural factors when assessing a building's acceptable level of safety. It should be pointed out, however, that the UBC as adopted by San Francisco specifically excluded section 104(j). Although section 104(j) of the UBC is not nearly as comprehensive as the SHBC, it allows for some deviation from the standard code requirements for "repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of the building".

Because San Francisco is now subject to the State Historic Building Code discussed above, there is no need for the City to adopt section 104(j) of the Uniform Building Code. The Uniform Code for Building Conservation (UCBC), however, could still be helpful as a guideline.

d. Tax-exempt financing

Because San Francisco is a charter city it possesses powers granted it by the state constitution and generally applicable state legislation. The charter represents the delegation of power from the state to the local government; in effect, it

defines the legal boundaries of the City's actions. As to the City's authority in the area of tax-exempt financing of historic rehabilitation, the two key provisions of the charter are those granting the City power over municipal affairs and the power to issue revenue bonds to advance such municipal affairs.

With a few specified exceptions, San Francisco's charter prohibits the issuance of revenue bonds for any purpose without the prior approval of a proposition to issue the revenue bonds by a majority of the voters. Exceptions to the voter approval requirements which could relate to rehabilitation financing for residential properties include the following:

Bonds for financing the acquisition, construction, or rehabilitation of housing (San Francisco Charter, Section 7.310.). Under this provision the Board of Supervisors may, by ordinance, authorize the issuance of bonds to establish a fund for the purpose of providing mortgage financing for the acquisition, construction, or rehabilitation of housing.

Bonds for residential rehabilitation assistance (San Francisco Charter, Section 7.308.). This provision allows the Board of Supervisors to authorize the issuance of bonds to establish a fund for the purpose of making loans to assist property owners with the rehabilitation of property in areas designated by the board as rehabilitation assistance areas.

Bonds issued pursuant to the authority contained in the Marks-Foran Residential Rehabilitation Act of 1973 (San Francisco Charter, Section 7.300(2)). The Marks-Foran Act provides a low-cost financing mechanism for local agencies (cities, counties, redevelopment agencies, and housing authorities) to encourage neighborhood residential rehabilitation. Under provisions of the act, the local agency follows a prescribed course of action leading to the issuance of rehabilitation mortgage revenue bonds. This course of action includes the following steps:

- adoption of a comprehensive residential rehabilitation financing program;
- selection of a residential rehabilitation area;
- adoption of rehabilitation standards;
- adoption of a plan for public improvements; and
- adoption of rules and regulations.

The above three exceptions to the voter approval requirement could be utilized by the City for the specific purpose of encouraging the rehabilitation of historic structures in residential areas. The mortgage financing or loans allowed by these provisions could be made available to designated historic districts, landmark structures, or other types of cultural areas

as established by the City to promote and encourage preservation as well as housing goals.

1. Marks Historical Rehabilitation Act of 1976 ¹⁸

Unlike the three methods discussed above, the Marks Historical Rehabilitation Act provides a financing mechanism which could be used to encourage the rehabilitation and preservation of historic properties in commercial areas. This law provides cities, counties, cities and counties, and redevelopment agencies in California with the specific authority to issue revenue bonds to finance the rehabilitation of historic property. The Marks Historical Rehabilitation Act requires local jurisdictions utilizing its provisions to designate historical rehabilitation areas and to adopt criteria for the selection of eligible properties. The act provides the opportunity for a city to create below market financing rates for rehabilitation development by selling tax-exempt securities (secured by the project revenues) for the specific purpose of assisting historic rehabilitation.

Although the Marks Act has been in effect since 1976, only a small number of bond issues have actually taken place. Among the factors which have impeded its use are federal restrictions. Interest on Marks Act bonds is exempt from federal taxation under the category of small issue industrial development bonds (IDBs). Federal requirements for small issue IDBs subject developers to a \$10,000,000 capital expenditure test. What this means under the Marks Act is that the developer cannot make more the \$10,000,000 in capital expenditures in the city or county issuing the bonds for three years on either side of the issue date of the bonds. The \$10,000,000 ceiling includes the project being financed by the bonds and also includes capital expenditures of major tenants after rehabilitation. This test can discourage large or sophisticated developers who might otherwise be interested in the advantages of rehabilitating older commercial structures and can weaken the projects by eliminating large anchor tenants.

Further federal restrictions on IDBs limit available financing to properties used in trade or business. This means that local governments cannot use the proceeds for loans to residential property owners.

Several recent amendments to the Marks Act broaden the criteria and simplify procedural requirements which could result in encouraging its greater use.

Because San Francisco is a charter city, voter approval would probably be required each time there is a proposal to utilize the Marks Historical Rehabilitation Act. An alternative

would be an amendment to the charter, adding the Marks Act to the specified list of exceptions for the issuance of revenue bonds without prior voter approval of each issuance.

Major tax reform proposals under consideration in Congress in 1986 could affect the ability of cities to utilize these bond financing programs. Before initiating any bond financing programs under the above state laws, the new tax reform proposals should be consulted.

f. The California Environmental Quality Act of 1970 (CEQA) ¹⁹

Closely modeled on the National Environmental Policy Act of 1969 (NEPA), CEQA requires all state and local agencies to prepare detailed environmental impact reports (EIRs) for any project significantly affecting the environment. An opening section on legislative intent declares it to be the policy of the state to "take all action necessary to provide the people of this state with clean air and water, and the enjoyment of aesthetic, natural, scenic, and historical environmental qualities..." Similarly, the definition of "environment" includes within its meaning "objects of historic or aesthetic significance."

Only a minimal link between the project and the local government is required to trigger CEQA's protection. CEQA applies not only to projects directly undertaken by a public agency, but to private activities in which the government is involved in some aspect of permitting, regulating, or funding.

The EIR is a public document which must identify each significant effect of the project on historic resources. The document must set forth and examine all reasonable alternatives to the proposed project along with mitigation measures and alternatives which would lessen or avoid the adverse effects of the project on historic resources.

CEQA creates a duty in public agencies to avoid or minimize damage to the historic environment where feasible. An agency "should not approve a project as proposed if there are feasible alternatives or mitigation measures that would substantially lessen any significant effects..." on the environment. Feasible alternatives are those "capable of being accomplished successfully within a reasonable period of time taking into account specific economic, environmental, legal, social, and technological factors." A project may be approved even though it has a potential for damaging a historic resource if the agency finds that the benefits of the proposed project outweigh the risk of the adverse environmental effects.

An opinion notable among CEQA historic preservation decisions for the relative detail in which the court examined the intricacies of the project approval process and the thoroughness required for EIRs is the Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco.²⁰ In this controversial case involving San Francisco's City of Paris building, the court refused to disturb the City's finding that rehabilitation or less destructive alternatives were not feasible where the EIR and findings were extensive and carefully prepared.

Projects which may affect archeological resources, as opposed to historic structures or buildings, may be evaluated under an alternative CEQA process found in what is called the Deddeh Act.²¹ The Deddeh Act takes into account only "unique archaeological resources" statutorily defined as archeological artifacts, objects, or sites that do not merely add to the current body of knowledge but either contain information needed to answer important scientific research questions, have special qualities such as oldest or best available example of their type, or are directly associated with scientifically recognized important prehistoric events or persons.

If the project will damage a unique archaeological resource, the government agency undertaking or approving the project may require that reasonable efforts be made to preserve such resources in their original location. If it is not feasible to preserve the resource in place, mitigation measures are required.

Provisions may be made for accidental discovery of an archeological site during construction. Such provisions may be evaluated and contingency funding and time may be allotted in order to recover an archeological sample or adopt alternative plans.

San Francisco has adopted local guidelines for the implementation of CEQA (S.F. Admin. Code, Sec. 31.21 et seq.) and has promulgated rules and regulations to guide the City departments in carrying out the CEQA procedures.²²

In spite of the elaborate procedures, CEQA often does not work as effectively as it could in the area of cultural and historic resources. As an existing City process, CEQA could be sensitized to the preservation goals of the City's Master Plan by amending current administrative rules and regulations. Two issue areas and suggestions for changing the current process are discussed below.

Ministerial Exclusions. The state CEQA guidelines provide for the exclusion of ministerial projects from the provisions of CEQA. While these guidelines contain definitions of

"discretionary" and "ministerial," they do not attempt to enumerate all projects in each category, leaving such discretion to local determination. Section 31.14 of San Francisco's local guidelines charges the Department of City Planning with the responsibility to maintain a listing of types of ministerial projects excluded from CEQA. This section further provides that such listings must be modified over time as the status of types of projects incur change under applicable laws, ordinances, rules, and regulations.

This ministerial exclusion from CEQA review often prevents agency scrutiny and public review where structures or sites of historic significance are concerned. The issuance of building permits, including demolition permits, often falls into the ministerial definition because they can be issued automatically without discretionary review by any City body. Even where, as in San Francisco, there is a Landmark Board in place to review proposed demolitions and alterations of landmarks, many structures and sites of historic, architectural, or cultural significance are not designated landmarks and may or may not have been identified through a survey. Consequently, many important structures are lost or substantially altered without any environmental review. Not only does this result appear inconsistent with the legislative intent of CEQA to protect all environmental resources, including those historic in nature, but it is inconsistent with a City policy to identify and protect historic and architectural resources.

Several approaches should be taken. First, although proposed alterations and demolitions of designated landmarks in San Francisco are subject to CEQA review, the procedures for triggering such review and the involvement of the Landmarks Board should be clarified and strengthened.

Second, the Department of City Planning's listing of ministerial projects should clearly state that any projects affecting buildings or sites which are California Historical Landmarks, Points of Historical Interest, listed or eligible for listing on National Register, designated as City landmarks, located within a historic district, or identified on an official City survey or inventory do not fall within the ministerial exclusion.

Third, a process should be established (not necessarily as a part of CEQA) which would require that notice of any project involving alteration or demolition of a structure or site over 40 years old be made to the public and interested persons 30 days prior to any action or issuance of a permit by any City agency. If evidence is received during that period that the structure or site affected by the proposed project is a historic resource as

defined by local landmarks guidelines or National Register criteria, action will be delayed for an additional 30 days pending a determination as to whether the structure should be designated as a City landmark. If so, CEQA will be triggered.

Categorical Exemptions. The state CEQA guidelines provide that certain classes of projects do not have a significant effect on the environment and therefore are categorically exempt from CEQA. Again, each local agency is required to list activities of the agency which fall within such classes, subject to the qualification that these lists must be consistent with both the letter and intent expressed in the classes specified in the state guidelines.

Section 31.17 of San Francisco's local CEQA guidelines provides that the Department of City Planning must maintain the required list of types of projects which are categorically exempt, the list being adopted in the form of administrative regulations by resolution of the City Planning Commission. Under San Francisco's current categorical exemption provisions, potentially significant historic, archeological, or architectural structures may be altered, replaced, or converted without public review. For example, classes of categorically exempt activities include the replacement or reconstruction of existing structures; new construction or conversion of small structures; and the repair, maintenance, or alteration of existing structures or topographical features. Obviously, projects falling within these classes could affect historic resources.

The City's guidelines for categorical exemptions were adopted in August 1980 and amended in April 1981, prior to the adoption of the Downtown Plan, the inclusion of preservation policies in several sub-area plans, and the completion of Heritage's extension of the Downtown Architectural Survey, which the Planning Department staff have reviewed and adopted for City use. Therefore, these guidelines are out of date and should be amended. They exempt the repair or minor alteration of existing structures, including interior or exterior alterations without reference to the architectural significance or official rating of structures. They exempt restoration or rehabilitation of deteriorated or damaged structures, including restoration of historic buildings, except for additions to restored historic buildings. They also exempt additions to existing structures under 2,500 square feet, or under 10,000 square feet if the project is located in an area that is not environmentally sensitive. The guidelines even exempt demolition and removal of individual small structures, except where the structures are of historic, archeological, or architectural significance. However, the definition of historic or architectural significance is extremely limited to mean "designated by the San Francisco

Board of Supervisors as a landmark or historic district or currently under formal consideration for such designation, or included in the list of architecturally and historically significant buildings adopted by the City Planning Commission on May 29, 1980." This covers a very small number of buildings, and could exempt alterations or demolition of structures that now are formally recognized in the Downtown Plan and several sub-area plans for protection. The May 29, 1980 list of the Planning Commission which covered buildings rated A or B by Heritage or rated 3 or above by the 1976 Planning Department Survey in the downtown is now obsolete, compared with the lists of buildings of significance adopted in the Downtown Plan.

The Planning Department should completely revise these guidelines as they relate to categorical exceptions for alterations or demolitions of buildings, to eliminate exemptions from CEQA review: for all buildings rated 1 or higher in the 1976 Planning Department survey; any building rated A, B or C in the Heritage extended downtown surveys; any building identified for preservation in any of the sub-area plans proposed or adopted by the department; any contributory structure in a conservation district of the Downtown Plan; and any contributory structure in a National Register-eligible historic district, or listed individually on the National Register. The guidelines should also have a provision that allows newly surveyed or evaluated buildings to be removed from categorical exemptions as soon as they are identified as significant by the department.

Because all projects involving historic resources should be subject to CEQA review, a provision should be added to the City's administrative regulations stating that "no project which may result in the substantial alteration to a historic resource shall be exempted by these provisions."

g. California Park and Recreational Facilities Act of 1984:²³

On June 5, 1984, Proposition 18 was approved, authorizing \$370 million in matching state grants, \$10 million of which is available specifically for historic resource preservation.

This is the first time a state park bond act has included funds for historic properties not having park or recreational uses. Applications for this money may only come from units of local government that own or have significant control over a historic property. Eligible properties include California Historical Landmarks, Points of Historical Interest, or those listed or eligible for listing on the National Register of Historic Places. Seventy grants to rehabilitate, restore, or acquire properties have been awarded by the Office of Historic

Preservation (OHP) over the past two years. As of this writing, one more funding year remains.

San Francisco could apply for a grant under this program to rehabilitate, restore, or acquire historic and cultural properties under City control, such as Coit Tower, the Beach Chalet, and other historic public property.

8. FEDERAL HISTORIC PRESERVATION LEGISLATION

In the research for this chapter, federal preservation law was examined for its potential to promote preservation goals in San Francisco. While absolutely nothing in federal law regulates the purely private activities of owners of properties listed on the National Register of Historic Places, several substantial benefits are available by reason of such listings to encourage owners to preserve and rehabilitate their historic properties. These benefits can be triggered or enhanced by City participation.

National Register properties receive some protection from activities of federal agencies stemming from federal ownership or federal involvement in approving or funding projects. These activities might include, for example, the use of federal funds for the demolition of historic buildings as part of an urban renewal project, a federally subsidized housing project, or a federally funded highway through a historic district or an archeological site.

Each of the programs discussed below can be utilized more effectively through the commitment and involvement of the City in the process. As many of the incentives and regulations are triggered by National Register listing, the City can encourage their more effective use by making nomination and listing of City resources in the National Register one of the goals of its preservation program. Other ways the City can enhance the protective/incentive mechanisms provided by federal law are discussed below.

a. The National Historic Preservation Act of 1966:²⁴

1. The National Register of Historic Places

The National Register of Historic Places is the nation's central inventory of cultural resources guiding the

implementation of federal preservation policy. Created by the National Historic Preservation Act (NHPA) and administered by the Secretary of the Interior, it contains a list of "districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture." It includes sites of state, regional, and local significance as well as those of national significance.²⁵

2. Grants and Loans

The National Historic Preservation Act (NHPA) provides for the following grants or loans to be made directly to owners of property listed on the National Register (subject to federal appropriations):

Direct grants for preserving National Register-listed properties, conducting demonstration projects, and assisting persons or small businesses within a National Register historic district.

Government guaranteed loans to finance projects for the preservation of a property included in the National Register.

Other grants are available from time to time directly to National Register properties. For example, under the Emergency Jobs Act of 1983 (P.L. 98-8), \$25 million was appropriated specifically for Historic Preservation Fund Development Grants. These grants produced construction jobs by sharing, on a 50 percent matching basis, the cost of development of historic properties.

Federal grants to local governments

Two additional federal grant programs, each authorized by the NHPA, are available for preservation purposes through local governments. Unlike the federal tax incentives, grants, and loans discussed above, involvement by the local government is necessary to trigger these benefits and the direct recipient is the local government.

Historic Preservation Fund: This program provides federal funds for state historic preservation programs and grants-in-aid for historic survey and inventory projects. The State of California makes sub-grants to local organizations and municipalities for survey and planning projects. Many cities fund their survey work from this source.

Certified Local Government Programs: Also authorized by the NHPA, the California State Historic Preservation Office (SHPO)

provides a mechanism whereby local governments can be certified to qualify directly for federal grants.²⁶ Under this program a minimum of 10 percent of the annual grant to the State of California must be transferred to certified local governments (CLGs). To qualify for local certification, a local government must: 1) enforce appropriate state or local legislation for the designation and protection of historic properties; 2) establish an adequate and qualified historic preservation review commission; 3) maintain a survey and inventory of historic resources; and 4) provide adequate public participation.

The SHPO has promulgated a more specific set of guidelines to be followed by local governments in order to qualify as a CLG, which are reproduced in the Appendix. These guidelines are consistent with and carry out the National Park Service regulations for approved state and local government historic preservation programs.

The kinds of projects for which CLGs can receive grant monies include the preparation of comprehensive historic preservation plans, administrative review of National Register nominations, rehabilitation plans for historic properties seeking federal tax benefits, development of public education programs, and other special projects which advance local historic preservation objectives. Priority for funding is given to CLGs in an expanded level of participation, for projects which would assist the state in administering the National Register and rehabilitation certification programs, or to those that would produce experience transferable to other local governments. Only four local governments participated in the CLG program in 1986, receiving a share of \$56,000 (10 percent of the State's \$560,000 federal grant). More local governments are expected to qualify for the limited funds in 1987. The Department of City Planning and Landmarks Board should submit an application for certification under the CLG program and an application for a share of the CLG program funds for 1987 and subsequent years. San Francisco's existing preservation program might qualify under the state guidelines, based on the prior certification of Article 10 for historic districts, according to a staff member of the State Office of Historic Preservation. However, primarily because of the requirement that surveys completed prior to the certification of a local government must be done in accordance with state standards, the costs of qualifying as a CLG may be more than the City's potential share of the grant funds available. As a preliminary step to applying for CLG status the Landmarks Board or Department of City Planning staff should review the California Historic Resources Inventory Survey Workbook (SOHP, April 1980, rev. Mar. 1984), and determine if the existing architectural surveys would meet state survey standards.

3. Section 106: Advisory Council on Historic Preservation review.

The following protective measures apply to properties listed or eligible for listing in the National Register where there is direct federal involvement. Since the requirements apply to properties eligible for listing as well as those actually listed, an obligation exists for federal agencies to identify unknown resources as a part of project planning.

The Advisory Council on Historic Preservation is created by Section 106 of the NHPA. Section 106 requires that any federal agency undertaking a proposed federal project, licensing activity or lending of federal assistance must, before approval of the expenditure of federal funds or issuance of any license, "take into account the effect of the undertaking" on any cultural asset included in or eligible for inclusion in the National Register. In addition, such federal agencies are required to afford the Advisory Council "a reasonable opportunity to comment with regard to such undertaking."²⁷

Utilizing Section 106 requirements and the required consultation requirements, the Foundation for San Francisco's Architectural Heritage and other groups have caused the preservation of several very important historic structures in the City, including the old Federal Reserve Bank Building, the Goodman Building, the Jessie Hotel, Jessie Street Substation and the Williams Building in Yerba Buena Center, the Pier Bulkheads for Pier 5 and 42 on the Embarcadero, and the Oriental Warehouse and other structures in South Beach. More sensitive alterations or additions to other buildings have also been assured through the use of this process, including the handicapped access ramps at City Hall and the additions to Rincon Annex Post Office. Unfortunately, most of these protection measures were only possible because non-profit preservation groups or concerned individuals caused the City agencies to be more diligent in carrying out their Section 106 responsibilities, or they circumvented the City agencies and went to the state and federal review agencies or the courts to invoke the procedures of this law to delay project approval. The City has not been completely responsible in adhering to the spirit or the requirements of this law when federal funds were involved.

Section 106 requirements can also be very important as a safeguard to the use of federal funds, for which the Section 106 requirements are delegated to the City administration, rather than administered by the federal granting agency, such as the use of Community Development Block Grant funds and Urban Development Action Grants.

The City should renew its Memorandum of Agreement (MOA) with the State Office of Historic Preservation and the Advisory Council, to require full involvement of the Landmarks Board in all consideration of the effect of federal actions and federal funding on historic resources in San Francisco. Such an agreement should incorporate full notification and review of actions by the local non-profit historic preservation organizations. An MOA with the state and federal government similar to that entered into by New Orleans, which provides for the review of all federally funded projects by the City landmarks board, should be reviewed when renewing the City's agreement.

b. The Economic Recovery Tax Act, the Tax Treatment Extension Act, and The Tax Reform Act of 1986.

1. Investment tax credits (ITCs)

The Economic Recovery Tax Act of 1981 (P.L. 97-34) provided a 25 percent ITC for the substantial rehabilitation of historic commercial, industrial, and rental residential buildings. The 25 percent ITC could be combined with a 19 year cost recovery period for the adjusted basis of the historic building. Non-historic buildings that were substantially rehabilitated could qualify for a 15 percent ITC if they were 30 to 39 years old and for a 20 percent ITC if they were 40 years old or over. However, the 15 percent and 20 percent credits were available only to non-residential industrial and commercial buildings used for income-producing purposes.²⁸ These provisions continue to apply to limited numbers of projects that qualified for transition rules.

In December, 1986, Congress and the President enacted major revisions to the tax code, in the Tax Reform Act of 1986, but retained ITCs at a level of 20 percent for qualified rehabilitation of certified historic structures, and 10 percent for qualified rehabilitation of buildings built before 1936. Depreciation periods were extended to 27.5 years for residential property, and 31.5 years for non-residential property. Other rules for real estate tax shelters were changed substantially in ways that could affect the amount of private investment in historic rehabilitation, particularly the "passive loss" rule, restricting the use of ITC's for sheltering non-project income.

ITCs have been a major incentive for rehabilitation in cities across the country and it appears that even modified by the recent changes they will continue to be effective.

Most of the rules governing the certification of historic rehabilitation projects have remained the same in the new law. According to officials in the State Office of Historic Preservation, San Francisco's landmarks ordinance (Article 10)

has been certified as meeting federal requirements for certified local historic district ordinances (under 36 CFR 67.8), allowing expedited review for certification of historic districts designated under the ordinance. Since ITCs are available for certified rehabilitation of all contributing structures in registered historic districts, approval of certified historic districts would greatly facilitate the use of these incentives. The process of certifying local historic districts offers the City certain advantages over the process of nominating individually historic districts for listing on the National Register. Outside of such districts, or districts individually listed on the National Register, contextual buildings that are not individually eligible for the National Register could not qualify for the historic rehabilitation tax credits, or for the income tax deductions available for conservation easement donations. Districts submitted for such certification require city participation and could be encouraged by the city preservation element. They do not require approval by the State Historic Resources Commission or the consent of more than 50 percent of property owners in the district, as do individually listed historic districts. Therefore, all contributing properties in such certified districts could qualify for tax incentives for rehabilitation without the nine to twelve month delay for individual nominations to the National Register. However, certification of local historic districts under the certified local ordinance has the same effect on property owners seeking tax incentives for rehabilitation as individually listed districts. Rehabilitation of contributing structures in the districts would be required to follow the Secretary of the Interior's Standards for rehabilitation, or lose eligibility for the investment tax credits for rehabilitation expenses.

The City should submit the required information about each existing and proposed Article 10 historic district to the State Office of Historic Preservation and the National Park Service for review for eligibility as certified historic districts. This would greatly expedite the eligibility of properties in such districts for the tax incentives for rehabilitation. Changes to the boundaries or controls for these districts necessary to qualify as certified historic districts should be considered by the Landmarks Board and Planning Commission, in light of the local purposes of such districts. The City should also submit the required information, along with a copy of Article 11, for the downtown conservation districts for evaluation as certified historic districts, as recommended previously in a report by John Sanger for the Foundation for San Francisco's Architectural Heritage, entitled "A Preservation Strategy for Downtown San Francisco". Any changes to Article 10 that are made in connection with the historic preservation element of the Master Plan or the implementation of the recommendations of this report

should also be resubmitted to the State Office of Historic Preservation and the National Park Service for certification as a local historic district ordinance.

2. Deductions for charitable contributions

The Tax Treatment Extension Act of 1980 establishes federal income and estate tax deductions for charitable contributions of partial interests in property listed on the National Register or located in registered historic districts. Generally, a donation of a qualified real property interest (including a conservation easement as discussed above) to preserve a historically important land area or certified historic structure will meet the test of a charitable contribution for conservation purposes, making federal income and estate tax deductions available to historic property owners.²⁹ These incentives were not affected by the Tax Reform Act of 1986.

c. The National Environmental Policy Act (NEPA): ³⁰

NEPA requires the federal government to "use all practicable means, consistent with other essential considerations of national policy," to preserve and enhance the environment, including the "historic, cultural, and natural aspects of our national heritage."

NEPA directs all agencies of the federal government to implement methods and procedures to give environmental factors appropriate consideration in planning and decisionmaking and to prepare detailed environmental impact reports on proposals for legislation and other major federal actions significantly affecting the quality of the human environment.³¹

In San Francisco, the requirements of NEPA can be met by compliance with CEQA (discussed above). However, if a major federal project or undertaking threatens historic or architectural resources in San Francisco, NEPA provides another avenue by which the City or local preservation groups can assure the avoidance of environmental impact or the mitigation of such impacts. In some ways, CEQA obligations for the avoidance of impact through the use of available alternatives are stronger than NEPA standards.

f. Section 4(f) of the Department of Transportation Act of 1966:

Applicable to all operating administrations under the authority of the Secretary of Transportation, Section 4(f) provides that the Secretary of Transportation shall not approve or fund any program or project which affects an historic site of national, state, or local significance, unless: 1) there is no

feasible and prudent alternative; and 2) such program includes all possible planning to minimize harm to the historic site.

The standard of review for a project under Section 4(f) is more substantive than procedural, offering a much stronger protection for historic resources than Section 106 Review or NEPA. These requirements can be utilized by the City or other groups in protecting historic, architectural, or archeological resources from federally funded transportation projects, like the proposed I-280 extension program. The Landmarks Board should review the I-280 alternatives and other federal transportation projects and provide guidance on how Section 4(f) should be used to avoid adverse impact on the City's historic resources.

g. Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, National Park Service:

In 1983, the National Park Service published in the Federal Register (Vol.48, No. 190, Sept. 29, 1983, p. 44716-44740) Standards and Guidelines for Archeology and Historic Preservation, which include those for preservation planning, identification, evaluation, registration, historical documentation, architectural and engineering documentation, archeological documentation, historic preservation projects and professional qualifications. A section on preservation terminology is also included. These standards and guidelines provide a very elaborate and detailed classification of recommended steps in an idealized preservation planning process, but they do not have the status of regulations and do not set or interpret agency policy. They are intended to provide technical advice about archeological and historic preservation activities and methods.

As general guidelines for preservation planning, this document is useful to review in relationship to the outline of the functions of a comprehensive historic preservation program provided in Chapter 10. The terminology used in these guidelines does not correspond directly to the common terms used in San Francisco's existing preservation planning process, and many of the steps in the idealized process seem redundant and unnecessarily complex. However, some parts of the document are particularly relevant to the need for a more systematic approach to preservation planning in San Francisco. In particular, the standard for establishing historic contexts (or themes) for preservation planning could be useful in identifying where future historic districts or groups of landmarks should be designated, based on the relationship of these areas or structures to San Francisco's history. The professional qualifications standards could be useful in the selection of qualified staff for preservation activities of the Planning Department and Landmarks

Board, or for appointment of professionally qualified members to the Landmarks Board.

In outline form below, the Standards and Guidelines provide the following structure for preservation planning:

Preservation planning is a process that organizes preservation activities (identification, evaluation, registration and treatment of historic properties) in a logical sequence.

Standard I. Preservation planning establishes historic contexts, (e.g. information about historic properties representing aspects of history, architecture, archeology, engineering and culture must be collected to define the relationships of individual properties to other similar properties.) Contexts describe the significant broad patterns of development in an area that may be represented by historic properties.

Standard II. Preservation planning uses historic contexts to develop goals and priorities for the identification, evaluation, registration and treatment of historic properties.

Standard III. The results of preservation planning are made available for integration into broader planning processes.

The guidelines for implementation of these standards are organized as follows, with step-by-step procedural recommendations for each:

- managing the planning process,
- developing historic contexts,
- developing goals for a historic context,
- integrating individual historic contexts - creating the preservation plan, and
- coordinating with management frameworks.

Additional excerpts of these standards and guidelines are provided in the appendix.

9. PRESERVATION PROGRAMS IN OTHER CITIES

The following outlines of the preservation programs of several major U.S. cities are based on a thorough review by Nancy Shanahan of preservation and zoning ordinances and on in-depth interviews with a major staff person in each city. The cities were selected because of the general similarities in the context for historic preservation between Boston, New Orleans, New York, Seattle and San Francisco. Each of these cities has substantial numbers of high quality older buildings in both its downtown and neighborhoods, a high level of economic development activity, and a tradition of public concern for and governmental involvement in preserving historic and architectural resources.

While each of the cities evaluated has established preservation programs that are unique to its own needs, government organization, and political structure, there are similarities in their approaches that differ markedly from that in San Francisco. Each of the cities has established separate landmarks or historic district boards or commissions that are independent of the planning function of the City, with their own authority to designate and regulate landmarks or historic districts. All of the boards and commissions have the power to deny applications to alter or demolish landmarks or buildings in historic districts, although in some cases their decisions can be appealed to an appeals officer, the Mayor or the City Council. These boards tend to be larger than San Francisco's with 11 to 13 members, except in Boston where there are nine appointed members and nine alternates. Most of the cities reviewed have more than one board or commission to control permits for separate historic districts, although this experience differs from the large majority of cities throughout the country that typically have only one board or commission. In New York, where there is only one commission, the commission receives advisory review comments on designations and alterations from community boards for each

neighborhood. While some of the separate historic district commissions have overlapping powers in some cities, the trend is toward commissions that are advisory to the central landmarks board or commission.

These independent boards and commissions have substantially larger staffs than the combined preservation staffs of the San Francisco Planning Department and Landmarks Board. From a high of 57 staff members in New York to a low of five professionals plus clerical staff in Seattle, the larger preservation staffs of these cities have enabled them to designate more landmarks and historic districts than San Francisco, indicating more commitment to historic preservation. However, the number of landmarks and historic districts designated in these older cities is also a function of the age of their landmarks programs (New Orleans' Vieux Carre' Commission was established in 1936), the larger number of historic properties in the cities, and the local public support for preservation during a period of greater economic development in these cities, while San Francisco remained relatively unchanged (between 1930 and 1960).

However, an independent, more powerful board or commission and larger staff has not guaranteed the protection of all landmarks or buildings in historic districts in these cities. In both Seattle and New Orleans, about 10 landmarks are allowed to be demolished or heavily altered each year, and in Boston historic buildings deserving landmark status are often denied landmark status altogether. The Boston Landmarks Commission has participated in some of the worst facade-only preservation projects in the country. In the case of New Orleans, however, such a large proportion of the city's buildings and geographic area is protected by historic designation that some demolition of designated landmarks may be expected and is probably acceptable to much of the public. In New York, the Landmarks Preservation Commission has preserved many landmarks, but the scale and character of the context of many of these landmarks has been dramatically altered by new development. It has also been unsuccessful in controlling the demolition of some of the historic theaters in mid-town Manhattan. In San Francisco, no designated landmark has been allowed to be demolished, in spite of the advisory powers of the Landmarks Board and its limited control over demolitions.

All of the cities reviewed have either completed or are in the process of completing citywide architectural surveys. Some cities, such as New York and Seattle, purposely avoid rating or classification of buildings (other than two categories, significant or insignificant) in order to avoid political pressures to demolish the lower rated buildings. In Boston and

New Orleans, six category rating systems have been useful in decisionmaking for designations and standards for alterations.

All of the other cities' preservation programs provide much more specific standards and criteria for review of alterations to landmarks or alterations and new development in historic districts. In some cases these standards are based on the Secretary of the Interior's standards, but most cities have found the need for even more specific standards for each historic district or for types of alteration decisions typically required.

All of the cities are attempting to adjust zoning controls in historic districts or in areas of high concentrations of historic buildings to minimize conflicts with preservation controls. However, the success of these efforts has typically been limited to those historic districts where the landmark controls override zoning, or where the landmarks agencies have good working relationships with the planning departments, such as New Orleans. No city reviewed has the same degree of comprehensive controls for historic preservation, height, bulk, urban design, environmental impact, and growth control as the new San Francisco Downtown Plan.

The main lessons learned in this review of other cities that are applicable to San Francisco are: 1) while more than one landmarks board has been established to manage several historic districts in some cities, this is not the national norm; 2) more professional staff and larger budgets than San Francisco provides are needed to adequately manage a large city preservation program; 3) other city landmarks boards control alterations of landmarks, typically without City Council or Planning Department approval; 4) authority to deny demolition or alteration of landmarks or property in historic districts is common among large city preservation programs; 5) citywide architectural surveys are needed, in addition to more specific research of properties for designation as landmarks or historic districts; and 6) landmarks programs that have the most interaction with their planning departments have more integrated zoning for historic preservation.

A detailed description of each of the preservation programs in the cities evaluated can be found in Appendix A.

10. ALTERNATIVE MANAGEMENT APPROACHES FOR HISTORIC PRESERVATION

This report's evaluation of San Francisco's historic preservation programs and the programs of other major cities demonstrates a need for changes in the existing management system for historic preservation in the City, and provides insights into alternative forms that such changes might take. This chapter outlines the many functions of a comprehensive historic preservation system, and presents alternative conceptual models for reorganization of these functions in City government. It concludes with assumptions about the current political context for legislative change that have affected the author's recommendations in the next chapter.

a. Functions of a comprehensive historic preservation program

The City now carries out a wide range of historic preservation functions through the Landmarks Board and the Department of City Planning and Planning Commission. Related functions are carried out by the City Library, the Department of Public Works, the City Architect, the Redevelopment Agency, Port Authority, and non-profit historic preservation and educational organizations. Rather than describe the existing functions of each of these participants, the following list identifies most of the functions of a comprehensive historic preservation program. Many of these functions are inadequately carried out under the present management system, if they are carried out at all, so historic resources continue to be lost and others remain unprotected.

There may be many appropriate ways of classifying or describing these functions other than that provided below. No particular significance is intended by the classification provided or the order of presentation of this list.

1. Historic preservation planning, including:

- a) development of historic contexts or themes for the identification, evaluation, designation, and treatment of historic resources. A historic context is an organizational format that groups information about related historic properties, based on a theme, geographic limits and chronological period;
- b) identification (survey) and evaluation of historic, architectural, and archeological resources, including: the collection, storage, handling, interpretation, classification, mapping, and dissemination of data;
- c) evaluation of survey information for public policy, ranking of surveyed resources by varying degrees of significance or for varying degrees of protection, establishment of priorities for designation of landmarks, significant and contributory buildings, and historic and conservation districts;
- d) development of preservation objectives, policies, and implementation proposals for the Master Plan and sub-area plans, including monitoring and revisions to these documents, as needed;
- e) development of policies, standards, and criteria for designation of landmarks and districts, alterations to landmarks and significant structures, and guidelines and controls for new development in historic or conservation districts;
- f) development of policies, standards, and procedures for the location, protection, interpretation, and display of archeological remains.

2. Public participation in preservation policy formulation and decision making.

3. Nomination of landmarks, significant and contributory buildings, and historic and conservation districts for local protection and control, state recognition, and National Register listing, including research, development of case reports or nomination forms, and descriptions of boundaries.

4. Processing of nominations for local legislation or local, state, or federal recognition, including Planning Commission and Landmarks Board review, citizen and property owner participation in the nomination process, conducting public hearings, and drafting of implementing legislation.

5. Review and approval, disapproval, or conditional approval of applications to alter designated buildings (including contributory buildings in protected districts), to construct new compatible buildings in protected districts (Certificates of Appropriateness), or to excavate sites of archeological significance.

6. Special historic/architectural review of government activities and decisions that affect historic, architectural, or archeological resources, including review of private nominations to state or national listings of historic places; review of federally supported or funded activities under Section 106 of the National Historic Preservation Act; review of alterations to significant City-owned buildings (e.g. Coit Tower, Civic Center); review of actions affecting such resources through CEQA; administration of the State Historic Building Code including appeals, review, and comment on special projects and public works affecting such resources (e.g. I-280 alternatives, Mission Bay, Port and Redevelopment Agency plans, surplus school property disposition).

7. Public information and education on the City's architectural, archeological, and cultural heritage, including dissemination of data on resource surveys, interpretation and communication of the importance of the City's heritage both locally and nationally, and development of a constituency of interest and support for the protection of this heritage.

8. Development and utilization of economic incentives for historic preservation, including transferable development rights, conservation easements, tax-exempt bond financing for rehabilitation, tax incentives for preservation and rehabilitation, or direct grants for acquisition or rehabilitation.

The National Park Service has published "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (Fed. Reg. Vol.48, 190, p.44716), which uses different terminology and classifications for some of these functions. The above classification and terminology is designed to be more recognizable in the planning context of San Francisco than in the context of the federal standards, although the functions are generally the same. One planning function that is stressed by federal standards that has not been used often as an organizing principle for preservation planning in San Francisco is the development of historic contexts for subsequent planning tasks. While the Landmarks Board has established "theme groups" for recommending groups of structures for landmark status, e.g. restaurants, flat iron commercial office buildings, churches, the City has not consciously tried to establish historical themes or

contexts for future survey, evaluation, and designation of buildings under Article 10, based on the most important patterns of history and development in the City. This is an important concept that could help establish priorities for future survey work and a direction for implementation of policies of the historic preservation element of the Master Plan.

b. Alternative management approaches

The following is an outline of several conceptual approaches to the realignment and reorganization of San Francisco's preservation programs to address the problems and inadequacies of the present system, as well as to build upon the strengths of those parts of the existing system that seem to be most effective. Each of these alternatives has some basis in actual experience, either because of the performance of similar management systems in other cities reviewed in this study or because of the current favorable political context for historic preservation discussed in the assumptions below. Other alternatives have been tried successfully in other cities, but, in the view of this author, with little or no chance of being seriously considered or adopted in San Francisco. For example, in smaller East Coast cities such as Annapolis, Charleston, and Savannah, most of the historic cores of the cities have been designated as historic districts and are strictly regulated to prevent any substantial new development. They are controlled by independent historic district commissions, that, in some cases, cannot be overruled by the local Planning Commission, City Council or Mayor. Such strict controls would be politically unrealistic in an economically dynamic larger city like San Francisco. Administration by a completely independent commission would require a change in the city charter that would be inconsistent with the general administrative structure of City government here.

The alternatives outlined do not discuss all of the changes or improvements in the City's policies, ordinances, or programs suggested in the recommendations; they merely outline the key characteristics of each alternative management system. There is no significance implied by the order of these alternatives.

1. A Department of City Planning preservation section

The plans and programs division of the Department of City Planning has demonstrated a strong commitment to historic preservation in the development and implementation of the new Downtown Plan and in the establishment of good relationships with

non-profit historic preservation organizations. This management alternative is a logical extension of this increased commitment, in the form of a new staff historic preservation unit of the department organized as a special section of the plans and programs division (like the Mission Bay section of this division, or the Special Projects section of the implementation division). It could also become a separate new office (like the Office of Environmental Review).

The conceptual basis for this alternative is that historic preservation should be fully incorporated into the policies and decisions of the Department of City Planning and Planning Commission, but it should be balanced with all other public values rather than treated as a separate special interest to be managed by the Landmarks Board.

Establishment of such a unit would recognize the significance of historic preservation as a City planning priority that cuts across all other planning and implementation activities. It would serve as a "preservation conscience" or advocate for historic preservation within the department. In the past few years, the department has initiated several plans and rezoning studies, such as for North and South of Market Street, neighborhood commercial areas, and a new residence element of the Master Plan that made no mention of historic preservation. Non-profit preservation groups, like Heritage, identified the omissions in the draft documents and the department cooperated in adding historic preservation policies and, in some cases, lists of buildings to be preserved. While the Landmarks Board and staff supported these additions, it does not have the resources to monitor all plans and programs of the department for integration of historic preservation, nor is this one of its responsibilities under Article 10. A new preservation unit of the department would help ensure that historic preservation becomes a part of the routine attitude of the department toward growth and conservation in the City, without having to be reminded by outside groups.

This alternative suggests that historic preservation would be given a more important place in the work, attitudes, and resources of the Department of City Planning and Planning Commission, but that it would be treated as only one of many City priorities in a comprehensive view of the City's future, rather than as a single-purpose program. Maintaining the Planning Commission's decisionmaking powers for historic preservation, albeit constrained by more specific policies, standards, and criteria, is designed to recognize and perpetuate the "balancing" of preservation with other public values.

This unit would be responsible for all architectural, historic, and archeological survey, evaluation, planning, nomination, permit processing, and public information functions outlined in 1 through 8 above, under the direction of the Planning Director, and with continued advice from the Landmarks Board. This unit would become the staff support for the Landmarks Board, the Planning Director, and the Planning Commission for all historic preservation matters in the City. A professionally qualified historic preservation planner or architect should be appointed as staff director or chief of this unit, and the unit should be provided with a budget for sufficient additional staff and consultant assistance needed to carry out the functions of a comprehensive, centralized preservation program. All applications for permits, rezoning, variance, or exceptions to planning code requirements affecting historic preservation would be reviewed by this unit, and advice would be provided to the Planning Director and the Planning Commission.

The role and responsibilities of the Landmarks Board would continue in generally the same form as outlined in Article 10, except that their advisory duties would be clarified. Many of the board's existing uncoded activities, such as reviewing environmental impact reports, Section 106, and other governmental activities affecting historic preservation outlined in function 6 above, would be shifted to the new historic preservation professional staff unit. More significant issues involved in these activities could be referred to the Board, at the discretion of the unit director or Landmarks Board president. The primary function of the Landmarks Board would be to advise the Planning Department on the appropriateness of designations of new landmarks or historic districts proposed by the new unit's professional staff or other parties, and to advise the department and the Planning Commission on Certificates of Appropriateness for alterations of such structures.

Sub-alternative: A more extreme version of this alternative would centralize all landmarks and historic preservation planning and regulation in a new preservation division of the Department of City Planning and the Planning Commission, and would abolish the Landmarks Board. The specialized professional expertise in historic preservation, now fulfilled by the Landmarks Board and its staff, would be provided by new trained and experienced staff of the department, and, perhaps, a designated historic preservation expert on the Planning Commission. More specific policies, standards, and criteria for designation and alterations of landmarks and historic districts would narrow the discretion of the commission to help ensure that alterations would be sensitive to the historic structures. Carefully tailored height and bulk limits and preservation policies and standards

incorporated into all sub-area plans and rezoning would provide further protection. Theoretically, a completely centralized preservation program in the Planning Department could provide the same level of protection for the City's architectural resources as the existing system or one of the other alternatives, but there are many practical drawbacks to such a management system. Among others these include an overload of already crowded Planning Commission meetings for review of many alterations to landmarks and historic districts; likely political resistance from board members and preservationists; conflicting allegiance of the professional preservation staff to preservation principles one the one hand and the political "balancing" or compromise often required of the planning approval process on the other hand. In addition, there is likely to be citizen opposition to centralizing too much control over landmarks under the planning director and commission without some checks and balances in the process. A preservation program without some form of landmarks board or commission would also not meet federal and state requirements for Certified Local Government status for allocation of federal historic preservation funds. For these reasons this sub-alternative is not recommended or evaluated in any greater detail.

Key features (not including sub-alternative):

- New Department of City Planning section for historic preservation;
- Professional preservation director or chief of unit, and support staff;
- All preservation planning, project review, special governmental review, and public education functions managed by new unit, with advice from Landmarks Board;
- Landmarks Board retains advisory status, with narrower, streamlined purposes for review of landmark and historic district nominations and certificates of appropriateness;
- Planning Commission retains all decisionmaking powers for historic preservation;
- Specific policies, standards, and criteria added to Article 10, the preservation element of the Master Plan, and each historic district ordinance and sub-area plan, limiting the discretion of the commission, the department and the Landmarks Board and making their decisions more predictable.

2. A new Landmarks Commission

Other cities have demonstrated the effectiveness of a separate Landmarks Board or commission with independent authority for designating and controlling alterations to landmarks and historic districts, particularly those in New York, New Orleans, and smaller East Coast cities. This alternative is based on the traditional model for landmarks protection that developed from the early experiences in Charleston, New Orleans, and Annapolis, and it is the concept under which the Landmarks Preservation Commission in New York City was formed. This approach is based a belief that historic preservation should be given special priority over other development considerations, once a landmark is designated or a historic district is established, because landmarks and historic districts cannot be replaced once lost. It assumes that separate landmarks commissions should have the exclusive authority to manage these non-renewable resources, because of their special qualifications, interests, and knowledge of historic preservation. However, it also assumes that appointed Landmarks Commission members would be capable of considering broader issues of concern to the public, including the economic impacts of landmarks controls on property owners, as long as preservation concerns are given paramount consideration.

The Certified Local Government Program of the federal government and the State of California is patterned after this concept of a strong, single-focus landmarks process. However, because of the description of duties and responsibilities of the Planning Commission in the City Charter, both the charter and the planning code would require amendment to implement a realignment of responsibilities from the Planning Commission to a new Landmarks Commission.

Under this alternative the Landmarks Board would become a separate commission, independent of the Planning Commission, with centralized responsibilities for all of the functions of survey, evaluation, nomination of landmarks and historic districts, review of alteration permits and permits for development in designated historic districts, special government review of historic issues, public information, and some economic incentives for historic preservation, as outlined in functions 1 through 8 above. Historic preservation planning functions outlined in 1 would be shared between the Department of City Planning and the new Landmarks Commission. The Landmarks Commission and its professional staff could initiate planning recommendations for historic preservation policies for the Master Plan or amendments to the Planning Code, and the Planning Commission would review and adopt or reject these recommendations, as appropriate. Designation of new landmarks or historic districts could be initiated by the Landmarks Commission, the Department of City

Planning, the Board of Supervisors, or outside groups. Recommendations would be heard by the Landmarks Commission and made directly from the Landmarks Commission to the Board of Supervisors. The Planning Commission could submit advisory opinions on such nominations, as they might affect other policies of the Master Plan or Planning Code, but could not veto such recommendations. Resolution of differences between the Planning Commission and the new Landmarks Commission over Master Plan and Planning Code amendments could be achieved on appeal to the Mayor and the Board of Supervisors. While a few cities have authorized Landmarks Commissions to designate landmarks without legislative approval, it is probably appropriate here to continue a process of final approval of each landmark or historic district designation by the Board of Supervisors and the Mayor, by ordinance.

The new Landmarks Commission of 11 to 13 members would be appointed by the Mayor, in the same manner as other City commissions, but from a list of candidates with specified qualifications and interests defined in the ordinance and related to expertise in architecture, history, historic planning, rehabilitation, and related fields. Federal and state guidelines for qualifications of commission members should be followed to assure that such a program would be eligible for federal historic preservation grants and delegation of National Register responsibilities.

The Landmarks Commission would have full responsibility for implementing a revised and strengthened Article 10 of the Planning Code, as well as for all regulatory functions in designated historic districts except for the use of such property, which would continue to be determined by the Planning Commission. Where changes of use in historic districts would require physical alteration to the structures or new development, both Planning Commission and Landmarks Commission approval would be required.

If more than one type of protection district were established in the Planning Code, e.g. conservation districts and historic districts, the Landmarks Commission would have authority for controlling physical changes in historic districts, while the Department of City Planning and Planning Commission would be responsible for changes in conservation districts because of the broader use, environmental conservation, and urban design purposes of conservation districts.

An independent Landmarks Commission should have its own professional staff, including a director with appropriate training and experience in historic preservation and rehabilitation and support staff with experience in surveys and

evaluation, preservation planning, preservation law, architecture, and related fields. As the review of other cities indicates, this staff need not be numerous, perhaps five or more using the experience of Seattle or Boston as a guide. Alternatively, this staff could be a special unit in the Planning Department for administrative purposes, but report to the Landmarks Commission for policy and direction.

Key features:

- A new Landmarks Commission of 11 to 13 qualified members, with separate authority for decisions affecting landmarks and historic districts;
- A professional staff director of the Landmarks Commission, with support staff trained in historic preservation;
- Recommendations for new landmarks and historic districts direct from the Landmarks Commission to the Board of Supervisors, with advisory comment only from Planning Commission;
- Planning Code and Master Plan changes and use decisions controlled by Planning Commission; both Planning Commission and Landmarks Commission approval needed for use changes requiring physical changes in historic districts;
- Strengthened Article 10, with authority to deny demolition, except in limited circumstances, along with more specific standards and criteria for alterations and for new development in historic districts;
- Landmarks Commission controls physical changes in historic districts and alterations to designated landmarks; Planning Commission controls conservation districts;
- City charter change likely to be needed.

3. An Integrated Landmarks Board and Department of City Planning preservation program

This concept builds upon the strengths of the present preservation management system, enhances the authority of the Landmarks Board, streamlines procedures for Article 10, and clarifies the roles and responsibilities of (and policies for) the Landmarks Board, the Department of City Planning, and the Planning Commission regarding historic preservation.

The concept for this alternative is that historic preservation should be fully integrated into the planning and

zoning policies and controls of the City, as in alternative 1, but that the specially qualified views of a strengthened and more focussed Landmarks Board are also needed. This alternative combines important parts of alternatives 1 and 2. It is based on the assumption that closer cooperation and a sharing of the total historic preservation responsibility between the three interrelated branches of the preservation program (Landmarks Board, Department of City Planning and Planning Commission) will lead to better protection and management of the City's historic and architectural resources. It would involve integration of historic preservation policies into the plans and development controls of the entire City, starting with the sub-areas surrounding the downtown that have plans under development or recently approved.

While the full authority of the Planning Commission would be maintained over recommendations for designation of landmarks and historic districts and, on appeal, for certificates of appropriateness for demolition or alterations to such properties, these decisions would be guided by more specific standards and criteria. Certificate of appropriateness applications for demolition or alteration to landmarks and buildings in historic districts would be delegated to the Landmarks Board, subject to appeal to the Planning Commission. If no appeals were made, based on specified grounds for appeal, the Planning Commission would not be involved in such decisions. This would greatly expedite the review of most applications for permits to alter landmarks or buildings in historic districts, which now require public hearings and review at both the Landmarks Board and Planning Commission.

Applications for demolition of landmarks would be controlled by strict standards in a revised Article 10, similar to those for category I buildings in the Downtown Plan. Decisions on proposed replacement of buildings in historic districts would be decided by the Landmarks Board, subject to appeal to the Planning Commission. New construction in historic districts would be approved by the Planning Commission with the advice of the Landmarks Board, because of broader issues of use, traffic, parking, and other applicable provisions of the Planning Code.

For a more integrated planning and landmarks process to work effectively, existing barriers to communication and working relationships between the Planning Commission, the department and the Landmarks Board and its staff need to be broken down. This could be accomplished through Planning Commission monitoring of the landmarks process, a clearer assignment of historic preservation planning responsibilities, more specific standards and criteria for demolition and alteration decisions, and stronger representation of the Landmarks Board on the Planning

Commission. For example, to overcome potential concerns of the Planning Commission about loss of authority to the Landmarks Board, certificate of appropriateness decisions of the board could be called up to the Planning Commission by the president of the commission or the Planning Director, in addition to private appellants. The commission could also monitor the decisions of the board (through the director's reports), to ensure sufficient consideration of private property interests and broader planning concerns by the board in its new decisionmaking role. To ensure that the Planning Commission adequately considers the views and values of the Landmarks Board, the staff director to the Landmarks Board or a designated board member should be appointed to the Planning Commission, in the same capacity as the City Architect or the Director of the Public Utilities Commission serves as a representative of their office.

Staff responsibilities for historic preservation would also be shared and integrated, between a new preservation section of the plans and programs section, the project review staff of the implementation division, and the staff to the Landmarks Board. The new preservation section of the Department of City Planning should be viewed as an extension of the support and capability of the Landmarks Board, rather than a separate group that competes with the Landmarks Board's existing responsibilities. This is based on an assumption that the duties of the Landmarks Board and staff are primarily regulatory in nature, and those of a new preservation section of the department are primarily planning responsibilities, but that the two sets of functions are closely related. The new section would require additional professional historic preservation staff, who would generally be responsible for all survey, evaluation, preservation planning, special governmental review of preservation matters, public information, and some economic incentives for preservation, as described in functions 1 through 3, and 6 through 8 above. The Landmarks Board staff could be a part of this unit and participate in these activities, but would be primarily responsible for processing of recommendations and nominations for landmarks and historic districts, and for staff support for review and approval or disapproval of recommendations and decisions of the Landmarks Board, as described in functions 4 and 5 above, under the new authorities delegated to the board. Alternatively, the Landmarks Board staff would remain in the Implementation Division for administrative purposes, because of the regulatory nature of the board, but this staff support should be increased. With qualified preservation planning staff in the new preservation planning section, and more direct interaction between the preservation planning staff and the Landmarks Board and staff, a higher volume of landmark and historic district nominations could be managed by the board. With more direct focus on certificate of appropriateness applications, and the processing of higher

volumes of nominations for individual landmarks and historic districts coming from the planning process; the Landmarks Board and staff should facilitate a smoother, more efficient, and less redundant process for the review of new landmarks and the review and approval of alterations of existing landmarks and historic districts. More interaction of the two staffs with the board, along with more clearly defined responsibilities, should also improve the department's understanding of historic preservation principles and practices and reduce conflict. Expanded staff for both the planning and regulatory functions of historic preservation is essential to improve the existing system.

To illustrate the distribution and sharing of historic preservation responsibilities, the principal preservation tasks would be carried out in the following manner. The staff of the new Department of City Planning preservation section would, with close consultation with the Landmarks Board and staff, identify historic contexts for identification (survey) of historic resources, and would review priorities for new survey activities and for designation of new landmarks and historic districts with the Landmarks Board. With concurrence from the board, the new section staff would prepare case reports for each proposed historic district, which would be reviewed by the board under existing procedures and recommended for designation to the Planning Commission and the Board of Supervisors. The ordinances to implement the new historic districts and landmarks would be prepared by the staff to the Landmarks Board, based on new standards for specificity similar to those of the Downtown Plan's conservation districts. For example, this process is generally being followed by the plans and programs staff in proposing a new historic district for the warehouse structures in the South of Market Plan area. Each pending and proposed sub-area plan would identify buildings to be protected based on the new section's evaluation of individual building ratings, which would be reviewed by the Landmarks Board under procedures similar to or the same as Article 10 designations, but as a geographic group of structures processed concurrently with the comprehensive plan or rezoning for each area. Case studies and evaluations of significance of each structure prepared by the staff of the preservation section would be reviewed by the Landmarks Board and recommended to the Planning Commission and Board of Supervisors, preferably as part of the package of amendments necessary to implement each sub-area plan. The preservation section's staff would also review the overall policies and controls proposed in sub-area or functional plans to assure that historic preservation values are considered and significant structures are not jeopardized. Applications for certificates of appropriateness for alterations of landmarks, buildings in historic districts, or alterations to buildings protected under the Downtown Plan would be reviewed by the Landmarks Board under the same procedures as

Article 10 (with perhaps some modification for distinctions between major and minor permits), and as provided in the Downtown Plan. Review of nominations to the National Register, Section 106 consultation, and other general historic preservation responsibilities would be carried out by the Landmarks Board, pursuant to Board of Supervisors resolution 268-70 (which would be codified in revisions to Article 10) with the additional support of the staff of the department's new preservation section, as needed.

This integration of organizational structure should, if practicable, be accompanied or preceded by integration of preservation policies and controls into all sub-area plans of the City, in the same general manner as the Downtown Plan, but with a redefinition of the standards for designation and classification of buildings as discussed below. Because all of the existing historic district ordinances are so vague, these should also be revised with new findings, purposes, and standards and criteria to guide building replacement, alteration and new construction.

Improvements to Article 10, recommended in detail in chapter 5, are essential to implement this concept of an expanded, integrated, historic preservation program. More specific standards and criteria, authority to prohibit demolition, and a redefinition of the duties and responsibilities of the Landmarks Board, Department of City Planning and Commission are the key elements of this change, but many parts of Article 10 would also be upgraded to the specificity of Article 11 of the Planning Code.

Key features:

- Delegation of certificate of appropriateness decisions for demolition and alterations to Landmarks Board, with appeal to Planning Commission;
- Decisions for new construction in historic districts remain with Planning Commission, with advice from Landmarks Board, guided by more specific standards;
- Planning Commission monitoring of Landmarks Board decisions;
- A new integrated preservation staff section of the Department of City Planning and Landmarks Board, with additional professional preservation staff for each;
- Refined description of staff duties, responsibilities, and accountability between new preservation planning and Landmarks Board Staff;

- A Landmarks Board member on the Planning Commission;
- A strengthened Article 10, with authority similar to Article 11 but with refined designation standards and building classifications and more specific qualifications for Landmarks Board members;
- Integration of preservation policies, controls, protected building lists, and standards and criteria for alterations in all sub-area plans; and
- Upgraded historic district ordinances.

4. Landmarks advisory boards for each large historic district

As the review of other cities' preservation experience indicates, it is commonplace for more than one landmarks board or historic district commission to be established to manage different parts of a city and more than one historic district. In many cases these other examples are accidents of history or products of an ad hoc approach to protecting specific areas, rather than a planned citywide strategy. Typically, a city will establish its first historic or landmark commission around a particularly threatened district, and instead of expanding the area of responsibility of the commission when additional historic areas are designated, a new commission will be established for the new area. In some cities, e.g. Seattle and Boston, some earlier commissions gained independent authority for a specific district. When new citywide landmark agencies were established for individual landmark designations and planning for new districts, subsequent special district boards became advisory to the citywide landmarks agency. This experience offers an alternative approach to historic preservation in San Francisco.

This alternative is based on the concept that some degree of neighborhood control and self interest should be incorporated into the regulation of historic districts. It assumes that when many historic districts (particularly large areas) are designated, a single volunteer commission cannot manage efficiently all applications for certificates of appropriateness. For example, a separate Alamo Square historic district advisory board could be appointed by the Mayor, made up of both preservation experts (e.g. in architecture, history, rehabilitation, and planning) and representative property owners and citizens residing in the historic district. The existing Landmarks Board could be maintained as a citywide advisory board for individual landmarks, smaller historic districts like Webster Street and Jackson Square, and general review of preservation matters as described in alternatives 1 or 3 above. The separate

historic district advisory boards could be advisory to the Planning Commission or to the Landmarks Board under some form of delegation agreement for minor alterations.

Such a system of multiple advisory boards, if applicable at all to San Francisco, would probably only be appropriate in cases of large historic districts, i.e. those where large numbers of applications for alterations are expected to overload the Landmarks Board or Planning Commission. Parochial neighborhood or property interests in the historic districts should not be a major consideration in establishing new historic district advisory boards, because of the need to avoid minor neighborhood disputes over uses and aesthetics in the administration of such districts.

Staffing for multiple historic districts and advisory boards can be centralized, or each board could have its own staff. This decision would have major budget implications.

Unless and until the work load of the existing Landmarks Board becomes too great to administer, it would seem unnecessary to establish more than one advisory board to administer historic districts. San Francisco's historic districts tend to be quite small compared to those in New Orleans, Boston, and other cities that have established multiple historic district commissions. The recommendations below also emphasize consolidation and integration of historic preservation management functions, and this alternative would tend to decentralize or fragment this management even more than it now is.

Key features:

- Large historic districts administered by a separate advisory board, reporting either to the Planning Commission or to the central Landmarks Board;
- Historic district advisory board members appointed by Mayor, with specified preservation expertise and resident representation; and
- Staffing of new boards would either be centralized or individually assigned to each board.

5. Separation of historic preservation from architectural preservation

This alternative would treat the management of the City's social and cultural historical resources in a different manner

than the management of architectural and urban design resources. Under the premise that architecture and urban design for older buildings should be managed as part of the same process that oversees the architecture and urban design of new development, architectural preservation would be treated as part of a continuum with the control of contemporary design. This control would be exercised by the architectural and urban design expertise in the Planning Department staff (supplemented with new rehabilitation expertise as necessary) and the Planning Commission. The special expertise of the Landmarks Board would be focussed more narrowly on the social and historical criteria of significance of buildings, places, artifacts, and archeological remains. To a limited degree, this concept is at work in the new Downtown Plan, because only architectural and urban design factors were used to establish the final ratings of significant and contributory buildings for protection, selected from a larger group of buildings that were rated under both historical and architectural values. The original draft of the Downtown Plan proposed to limit the Landmark Board's jurisdiction downtown to social and cultural factors of significance, after the architectural and urban design ratings were established by the plan.

If such an alternative were established, Article 10 would be amended to limit the Landmark Board's authority to non-aesthetic matters of social or cultural history of buildings or places (i.e., Heritage survey methodology criteria 3: age, 7: person, 8: event, 9: patterns, and archeology). Their authority could be increased over such matters by making the board a new Landmarks Commission, with powers independent from the Planning Commission, as in alternative 2 above, but with a narrower scope of concern. Alternatively, it could become advisory to another City department or commission, such as the City Library, because of its change in focus. The Landmarks Board (or commission) would recommend designations of buildings or sites under the more narrow criteria listed above, but not for architectural, urban design, or environmental factors. Applications to alter "historic" landmarks would be reviewed by the board only to the extent that historical evidence or fabric were proposed to be changed or removed. Existing landmarks and historic districts might have to be classified as to their architectural or historic importance to determine whether the Landmarks Board or Department of City Planning would review proposed changes. The Department of City Planning and Planning Commission would be solely responsible for recommending designations of landmarks on the basis of design and for reviewing alterations of significant older buildings on the basis of design, whether the application was for changes to historical designs or for new contemporary design. If proposed new landmarks, historic districts, or alterations involved both architectural and historic factors,

both the Landmarks Board and Department of City Planning and Planning Commission would have to review and approve the application.

A narrower focus on historic rather than architectural matters would likely reduce the potential conflicts between the Landmarks Board, the Department of City Planning, and Planning Commission over matters of design. However, it would probably increase dramatically the number of conflicts over jurisdiction (i.e. whether proposed changes involved "historic" matters or merely architectural design matters). It would also be necessary for the Department of City Planning and the Planning Commission to retain new expertise qualified to review and critique applications for designations and alterations of older significant buildings, because of the specialized nature of generally accepted principles and standards for this field. More specific standards and criteria governing alterations of historic buildings and new development in historic districts, recommended for other alternatives above, would be even more important if this alternative were adopted.

This alternative would tend to fragment rather than integrate the City's historic preservation programs. It would treat the City's historic and architectural resources as if they were made up of separate elements when, in reality, the significance of most older buildings is based on a complex mix of both historical and aesthetic values. It is not possible, for example, to separate the significance of the unique architectural design, style, materials, and details (i.e. aesthetics) of the Mills Building from the historical fact that its design was heavily influenced by the architectural trends of the Chicago firm of Burnham and Root and the work Willis Polk, who moved to San Francisco to manage Burnham and Root's San Francisco office. Nor can its architectural significance be divorced from the fact that it is one of the few downtown buildings to survive the earthquake and fire of 1906. It is unlikely that historic preservation interests in San Francisco would accept artificial distinctions between historic and architectural values in buildings, or allow the management of these resources in such a fragmented way.

Key features:

- Narrow the Landmarks Board's focus of management concern to "historic" matters, and give the Department of City Planning and Planning Commission complete control over "architectural and urban design" matters;
- Landmarks Board reviews only matters affecting historic fabric or remains; Planning Department reviews all matters of design;

- Increase the Landmarks Board's authority over historic concerns;
- Establish more specific standards and criteria for altering historic buildings and new development in historic districts;
- Staff expertise of Landmarks Board and Department of City Planning becomes more specialized; strengthen the Department of City Planning's expertise in principles and practices of rehabilitation and altering historic buildings; strengthen Landmarks Board's staff expertise in social and cultural history of San Francisco.

c. Assumptions

The recommendations of the next chapter are generally dependent on whether the author's assumptions are correct or not, or, more accurately, whether those responsible for implementing the results of the study agree with the assumptions. These assumptions and recommendations are only those of the author, and are not necessarily shared by the Department of City Planning, the National Trust for Historic Preservation, co-sponsors of the study, or other parties involved in reviewing and commenting on this study.

1. The preservation of historic, architectural, and archeological resources is very important to the quality of life and the economy of San Francisco, especially for the maintenance of physical and aesthetic diversity, neighborhood identity, tourism, cultural values, and the attractiveness of the City for new businesses and residents.
2. However important, these values of historic preservation must be balanced with many other public values, such as affordable housing, quality schools, jobs for residents, a healthy tax base, efficient transportation systems, institutional services for police, fire protection, and public health and safety, a clean and healthy environment, recreation, entertainment and arts services, and the overall aesthetic beauty of the City. A historic preservation program which recognizes and supports these other values, rather than competing with or preempting them, is likely to be more successful.
3. Most conflicts that occur over historic preservation are a result of conflicting weights given to these values, between the administrative agencies involved in historic preservation and development decisions or between these agencies and private

property owners, non-profit preservation groups, or citizens involved in the decisionmaking process.

4. Conflicts between values are to be expected in the planning and development approval process, and often help clarify public policy. It is generally preferable to resolve conflicts through public policy, plans, or decision standards and criteria established in advance than through ad-hoc decisions made during case-by-case review of applications for permits.

5. Historic preservation, as a non-mandatory element of the Master Plan, must be politically popular to be successfully adopted and implemented. These values are more popular among residents and public officials today than in recent years. This popularity should support a new historic preservation element of the Master Plan and strong implementation measures.

6. Master Plan policies and objectives are not as effective in implementing public policy as changes in the Planning Code and other ordinances; therefore, changes in Articles 10, other parts of the Planning Code, and rezoning for sub-areas are necessary, and should be adopted in generally the same time frame as the Master Plan preservation element.

7. Existing zoning, with restrictive height and bulk controls in most residential neighborhoods of San Francisco, high economic values of older structures, and the historic preservation controls in the new Downtown Plan provide substantial protection for most concentrated areas of architectural and historic resources in San Francisco. However, direct controls over demolition or alteration of significant architectural and historic resources are lacking in most areas.

8. San Francisco has many more architecturally and historically significant structures and neighborhoods than have been surveyed or designated for protection. Without adequate surveys the City cannot determine comprehensively where or how many of such resources should be protected.

9. The extent of realignment of decisionmaking authority and the need for additional budget and staff will have a major effect on the management approach for historic preservation that will be acceptable to San Francisco's elected officials. Changes to the existing management structure that require amendments to the city charter will be more difficult to implement than changes to the Planning Code or other ordinances. Incremental changes are generally easier and faster to implement than sweeping changes of entire systems, although not always more appropriate.

10. The success of any historic preservation program depends as much on the will of the people administering the laws and programs and their commitment to the purposes of historic preservation, as on the legal strength or organizational structure of the programs established. These people tend to change over time, but their decisions will generally reflect the views of the elected officials who appoint them, or attitudes of the public at large toward historic preservation.

11. More historic and architectural resources in San Francisco are threatened because they have not been identified, evaluated or designated for protection; than because designated resources are determined to be expendable in the face of other public and private values. However, City preference for other values has often been an obstacle to designation for historic preservation, particularly after major private investment decisions have been made.

12. The Downtown Plan and recent historic district designations have demonstrated that it is generally quicker, more efficient, and politically more acceptable to identify, evaluate, and designate groups of buildings in a geographic area for protection as a part of comprehensive planning, than to serially designate single buildings on their individual merit.

13. The capacity of the City to protect all historic, architectural, and archeological resources of significant value is directly limited by the amount of public staff and financial resources devoted to the task. San Francisco has committed far fewer of such resources to historic preservation than most other cities of its size or comparable historic value.

11. RECOMMENDATIONS

Recommendations for modifications to existing plans, ordinances, and management programs for historic resources in San Francisco can be found throughout this report. This chapter first recommends one of the conceptual approaches for a comprehensive preservation program, as discussed above. It then provides recommendations that could improve the City's preservation programs, as part of or independent from this alternative. In addition, many recommendations are provided throughout individual sections of the report.

1. The City should adopt a historic preservation element of the Master Plan, and should amend some policies of the Master Plan to remove or modify policies that could conflict with historic preservation. Currently, historic preservation policies are scattered throughout several elements of the Master Plan. These existing policies are very limited and do not provide an overall coherent direction for zoning, the activities of the landmarks process, or sub-area planning. A coordinated, comprehensive, and specific historic preservation element should be adopted to guide the City's planning, zoning, landmarks regulation, and public works activities that affect architectural, historic, and archeological resources. The Department of City Planning is now developing a proposed historic preservation element of the Master Plan. More detailed discussion of the recommended scope, purpose and contents of a historic preservation element is provided in Chapters 1, 2, 8 and other parts of this report.

2. An integrated Department of City Planning-Landmarks Board historic preservation program should be adopted, with major changes to Article 10 and pending sub-area plans in the short term and significant expansion of the number of landmarks and historic and conservation districts in the long term. Management alternative 3, described above, should be adopted by the Planning Commission and the Board of Supervisors as the primary measure to implement the historic preservation element of the Master Plan,

and this alternative should be enacted through amendments to Article 10 and other parts of the Planning Code shortly after the Planning Commission's adoption of the new Master Plan element. The key features of this management system include:

- Delegation of decisions for alterations to or demolition of landmarks and properties in historic districts to the Landmarks Board, with appeals to the Planning Commission;
- Approval of new construction in historic districts remains with the Planning Commission, with advice from Landmarks Board and more specific standards;
- Planning Commission monitoring of Landmarks Board decisions;
- A new, integrated preservation staff section of the Department of City Planning and Landmarks Board, with additional professional preservation staff and refined descriptions of staff duties, responsibilities, and accountability;
- A Landmarks Board member on the Planning Commission;
- A strengthened Article 10 with authority similar to Article 11 but with refined designation standards and building classifications;
- Integration of preservation policies, controls, protected building lists, and standards and criteria for alterations into all sub-area plans; and
- Upgraded historic district ordinances.

Many of these features are discussed separately in Chapter 10 and in the recommendations below.

3. Article 10 of the Planning Code should be amended, to establish more specific purposes, standards, and ratings for designating landmarks and historic districts; to specify standards and criteria for preservation, demolition, replacement, and alteration of rated buildings, including the authority to deny demolition and to guide new development in historic districts; to redefine duties and responsibilities of the Planning Commission, Department of City Planning, and Landmarks Board in accordance with the integrated preservation program recommended above; and to conform generally to the specificity and standards of Article 11. Detailed recommendations for the amendment of Article 10 are provided in Chapter 5 and an a separate report.

4. Standardized survey and evaluation procedures, standards, and criteria should be adopted by the Planning Commission and Landmarks Board based on the general format of the Heritage and Oakland architectural surveys and the 13 criteria of significance used in these surveys.

Conducting a comprehensive citywide architectural survey would involve substantial resources and take a long time to complete. Priority areas for upgrading existing surveys should be based on a) high concentrations of architectural and historic resources; b) the degree of threat to the resources; c) neighborhood or citizen interest in protecting the resources, and d) establishment and prioritization of historic contexts (or themes) based on important aspects San Francisco's history to be preserved. The Master Plan should delineate areas of potentially high concentrations of historic and architectural resources, based on existing surveys and historic contexts established in the preservation element. Additional surveys and evaluations should then be conducted in these areas, based on preliminary goals, purposes and historic contexts for the preservation of the areas. These might include preservation of a particular style of architecture, a particular period or event of historic significance, an environmental setting, a unique urban design feature, a group of structures of a particular master architect, or other purposes defined in revisions to Article 10 or in the historic background of the preservation element. These goals, purposes, and historic contexts should then guide the additional survey and evaluation tasks needed, in order to document the significance of areas and structures that represent key periods in the history of San Francisco. As a goal oriented survey approach, information would not be collected unless it directly serves the legal or educational purposes of the management system. Additional surveys (or updating of existing surveys) should also conform, to the extent practicable, to the "California Historic Resources Inventory Survey Workbook" standards. This would help ensure full use of the survey results in nominations to the National and State registers of historic places, would provide useful data to the State historic resource inventory system, and would help the City qualify for a share of state preservation funds. Compliance with state survey standards is required for eligibility as a Certified Local Government program.

The Department of City Planning should adopt survey standards, criteria, and procedures, provide technical and financial assistance to preservation and neighborhood groups to complete sub-area architectural surveys; review and evaluate the results of each survey; refer the evaluations to the Landmarks Board for recommendations to the Planning Commission; and process the recommendations to the Planning Commission for adoption of

the findings as formal City policy. The Department of City Planning should also set priorities for surveying areas of the City are in greatest need, and should conduct these surveys in-house when necessary. Staff or consultants trained in architectural evaluation and experienced in conducting surveys should be responsible for any in-house surveys. A specific time frame should be established as a goal to complete a citywide comprehensive survey and evaluation of architectural and historic resources. To the extent possible, data from existing surveys, city property and permit records, and private files should be utilized to complete a comprehensive, standardized citywide survey.

5. Interim measures to protect threatened architectural and historic resources should be adopted until comprehensive surveys and official designations can be completed. Several architectural surveys by qualified architectural historians, architects and volunteers now exist for the downtown and several neighborhoods. The Department of City Planning conducted a citywide architectural survey in 1976 that considered exterior architectural values only. While many of these surveys are incomplete or inconsistent with the format and evaluations of other City-recognized surveys, they provide sufficient information for interim restrictions on the highest rated buildings until more comprehensive research and evaluation can be completed. Under revisions to Sections 1002(a)4 or 1011 of Article 10, or under a new interim demolition control ordinance, the Planning Commission should adopt the results of the existing 1976 department architectural survey and the findings of existing architectural surveys of sub-areas of the downtown and certain neighborhoods for environmental review purposes and the control of demolitions. The rated buildings identified in these surveys should be recorded in the department's plat books in order to trigger site-specific environmental review of permit applications to demolish or alter these properties. The department's CEQA guidelines for categorical exemptions and environmental review should be modified to require discretionary (non-ministerial) review of such permit applications by the Planning Commission. Either Article 10 should be amended, or a new interim control ordinance should be passed to authorize the commission to deny demolition or require modification of such applications to avoid or mitigate the loss of architectural or historic resources. The Bureau of Building Inspection and Permits should be provided a list of buildings rated by these interim surveys, with instructions to refer all applications affecting these properties to the Department of City Planning for review.

6. All pending sub-area plans should be revised to incorporate historic preservation policies, controls, and lists of designated buildings for protection. Several sub-area plans are pending

final drafting, review and approval by the Planning Commission and subsequent adoption by the Board of Supervisors and the Mayor. These include plans for Van Ness Avenue, South of Market, Chinatown, and neighborhood commercial rezoning areas. Other sub-area plans, such as for Rincon Hill, North of Market, the Northeast Waterfront and the Civic Center, do not fully protect historic and architectural resources. The historic preservation element of the Downtown Plan has established a standard of specificity, strength, and completeness for comprehensive planning and zoning that should be adopted as a model for all pending and adopted sub-area plans for the City. Each of these plans should be revised to establish policies and controls for historic preservation; categories of significance for important buildings in each area, based on available surveys; designations of historic or conservation districts, where appropriate; standards and criteria for alterations to rated buildings; and economic incentives for preservation or disincentives for demolition, where appropriate. Other provisions of Article 11 should be incorporated into the zoning ordinances implementing these plans (e.g. to avoid a "taking" or demolition by neglect, procedures for change of ratings, etc.), and these should be incorporated into the ordinances or included by reference. Conditional use review is not a sufficient or predictable process for preservation, and may not provide adequate control of alterations to architecturally or historically significant buildings in these planning areas. While each of these sub-area plans must balance many values in addition to historic preservation, such plans provide the opportunity to delineate, in advance, which properties should be encouraged to be preserved and rehabilitated, and which should be allowed to be redeveloped for new structures and new uses. On those sites where preservation of the existing structures are determined to be appropriate as a matter of public policy, height and bulk limits for the sites should reinforce the preservation policies, rather than create economic incentives to undermine the preservation purposes. Uniform height and bulk districts throughout a planning area may need to be broken down to site-specific or block-specific limits, in order to encourage historic preservation of individual buildings and special districts.

7. All historic district ordinances should be upgraded to reassess boundary locations, and expand them where needed; clarify the findings and purposes of each district, in lieu of "generic" purposes applying to all districts; define appropriate categories of building significance, related to the purposes of each district; adopt specific policies for each building category for preservation, replacement, or demolition; incorporate more specific standards and criteria for assessing compatibility of proposed alterations and new construction with the district; and clarify the scope of alterations that will be formally reviewed

under certificate of appropriateness procedures (e.g. only those requiring permits or paint color and hardware). The survey data and boundaries of each historic district should be submitted to the State Office of Historic Preservation and the National Park Service for certification under the City's existing certified local ordinance (Article 10), so that property owners within each district will be eligible for maximum tax incentives for rehabilitation and easement donations. If upgraded, Article 10 should be submitted for recertification.

8. A new classification of conservation district should be added to the Planning Code, to provide protection to concentrated areas of important architecture, urban design, or environmental features and important neighborhoods that may not be historic. Existing historic district designations of Article 10 vary substantially in purpose, and their architectural and historical features are not always of the same level or period of significance within each district. In order to clarify the purposes of historic district designation, while protecting aggregations of important architecture or environmental features of certain areas that deserve protection, either Article 10 should incorporate the concept of conservation districts found in Article 11 of the Downtown Plan, or a new Conservation District Article of the Planning Code should be adopted. The later alternative may be more appropriate, particularly after the passage of Proposition M, which places high priority on conservation of existing housing, neighborhood character, parks and open space, and existing industrial and commercial uses and public services. These districts can have a wider range of conservation purposes than historic districts. Moreover, the criteria for boundary and building designation, along with the standards and criteria for alterations, preservation, or replacement and new development in these districts, can be tailored more closely to the purposes of the designation (either more or less strict, depending on the purposes of the district). The format, definitions, and standards of the Article 11 conservation districts should be used as a model, but each conservation district ordinance should be tailored to suit the purposes of the district. Administration of conservation districts could follow the same procedures as the conservation districts outlined in the Downtown Plan, when the purposes and control standards involve architectural protection. Others might be administered by the Department of City Planning staff and Planning Commission in a more general way, where non-historic or architectural matters are being controlled (e.g. open space, residential or neighborhood shopping district conservation). For example, if a conservation district were established to protect the urban design qualities, mix of neighborhood serving uses, open space, and sunlight qualities of the North Beach shopping area; the detailed procedures for review of alterations to

buildings would not be incorporated into the administration of such a district. However, if historic and architectural protection or the control of physical alterations to the buildings that contribute to such a district were needed to protect the district, either a historic district or a conservation district review process should be established.

9. The City should survey publicly owned historic and architectural resources and establish policies, standards, and procedures to protect them; the City should also allocate sufficient financial resources for their maintenance. While the City increases its public policies and controls to protect privately held architectural resources, many valuable public monuments remain unprotected. Some are badly deteriorated and in need of sensitive rehabilitation, and others are demolished to meet other public needs, including revenue. Other public property in the ownership of the Port Authority and the Redevelopment Agency are inadequately protected, and no standards exist for guiding alterations. This represents a double standard to private property owners affected by landmark controls and to the public.

Because of the importance given to the quality of civic architecture in the past, the qualifications and stature of the City Architect's Office, and the financial resources devoted in the past to public architecture; San Francisco has some of the highest quality schools, libraries, park structures, government office buildings, and public monuments in the nation. However, in the past five years at least two architecturally significant school buildings have been demolished while others are threatened with demolition; two of the most important Civic Center structures have been threatened with incompatible alterations supported by the City Administration, and at least two park structures, with their irreplaceable art works, have been damaged by deterioration. There are few policies or landmark controls for publicly owned structures in the City, and financial resources to maintain these resources are inadequate.

The Department of City Planning and the Landmarks Board, with assistance of the City architect and private preservation organizations, should systematically survey and evaluate publicly owned buildings and should designate those that qualify as City landmarks. Then the City should establish policies, criteria and standards for their protection. As a first step, the Landmarks Board should complete the review and recommendation of the Civic Center National Register Historic District, as an Article 10 historic district, and submit it to the Planning Commission and Board of Supervisors for adoption. Design guidelines for alterations and development within the Civic Center area should be updated from the Civic Center Master Plan to reflect more

recent studies conducted by the Department of City Planning staff, in cooperation with the Landmarks Board and the Art Commission. The City should apply for state (Proposition 18) and federal funds for the rehabilitation and maintenance of these structures. The City should take the lead in an effort to raise funds from private donations for the rehabilitation of historic public buildings (e.g. Coit Tower and the Beach Chalet), and should allocate sufficient general fund revenues to supplement private funds to prevent deterioration of such resources. While the City has limited authority to impose its land use regulations on property owned by the state and federal government, significant structures owned by these governments should be designated for landmark status and city policy for their protection should be established, to be carried out by applicable state and federal laws which recognize local policies. The City architect's office and the City property management agency should establish review procedures with the Landmarks Board for the disposition and alteration of City owned property, and the Memorandum of Agreement with the State Office of Historic Preservation and the federal Advisory Council on Historic Preservation should be updated to ensure Landmarks Board review of disposition and alteration of state and federal property.

10. The Department of City Planning and Landmarks Board should identify and protect concentrations of significant architecture through rezoning and/or designation of historic or conservation districts. The department has begun to map areas of concentrations of significant architecture, based on the City's 1976 architectural survey and old Sanborn maps, for potential downzoning or historic or conservation district designation. This process should be completed as soon as practicable, and should be coordinated with a process of upgrading the quality and consistency of the architectural surveys. The areas should be protected through at least three stages of Planning Commission action: a) delineate boundaries of each potential district in the department's plat books to trigger special environmental review of the effects of building permits on the area's character and architectural resources; b) reduce allowable height limits and use densities where needed to remove the economic incentives to demolish contributing structures; and c) prepare case reports and recommend designation of such areas for historic district status under a revised Article 10 of the Planning Code or conservation district status under a new article of the Planning Code.

11. The City should commit financial and staff resources to the management of historic resources in a measure commensurate with the importance of historic preservation to San Francisco's economy and quality of life. Over the past five years the Department of City Planning's budget has been increased by about 250% (from about \$2.3 million in '81-'82, to \$5.9 million in

'8d5-'86), the staff support to the Landmarks Board has remained the same - - only one professional preservation planner. Additional staff time is directed to architectural evaluations, preservation policy development and planning, architectural review of alterations, and for preservation aspects of sub-area plans, but these resources have fluctuated with the demands of other Department priorities and are not directed specifically for preservation. The Landmarks Board's staff support is about one-fifth of the next smallest preservation program in the other cities evaluated in this study, Seattle's, and about 3 percent of the staff committed to historic preservation in New York City. Inadequate staff support to the Landmarks Board is probably the largest single reason that more local landmarks and historic districts have not been designated or that more property has not been listed on the National Register of Historic Places. In similar size cities in the East Coast and Midwest, where city government has systematically nominated properties to the National Register, substantial private investment has been attracted to the rehabilitation of such property to take advantage of generous federal tax incentives. It is likely that these cities have more than recouped their investment in preservation planning through the increased tax revenues and economic base generated by the upgrading of large numbers of historic properties. Other planning and community development programs that are equally important to the citizens of San Francisco, such as housing, economic development, transportation, the fine arts or recreation, receive many times more financial and staff resources to carry out their activities. The Department of City Planning should establish new descriptions for trained and experienced preservation planner and architect positions; develop a budget request to support a new preservation section of the plans and programs division, plus additional support staff for the Landmarks Board; and seek an increase in or reallocation of its next budget in order to implement an integrated Landmarks Board-Department of City Planning preservation program along with the new preservation element of the Master Plan.

12. Obsolete sections of the Planning Code that increase the threat to historic and architectural resources should be removed or modified. Chapter 4 identifies a number of provisions of the Planning Code that are either obsolete in light of the new controls of the Downtown Plan, or that may inadvertently increase economic pressures to demolish individual buildings or groups of buildings of architectural or historic significance. The Department of City Planning should evaluate these sections, develop a list of proposed amendments, and recommend changes to the Planning Code to bring the code into general consistency with the provisions of the Downtown Plan and a new historic preservation element of the Master Plan. These changes should be

identified as implementation measures of the preservation element.

13. Economic incentives for preservation and rehabilitation of significant buildings and landmarks should be utilized and disincentives to the preservation and rehabilitation of older buildings should be removed. The review of state and federal historic preservation legislation in Chapters 8 and 9 identifies a number of programs of income, property, and estate tax relief for preservation and rehabilitation of historic structures. Increased awareness of these programs by property owners and investors, together with City action to facilitate the use of these programs, could increase the flow of private capital into historic and architectural resources of the City while increasing tax revenues, jobs, tourism and the seismic safety of these structures. Tax-exempt bond financing authority is available to provide capital funding for rehabilitation projects. The City should evaluate the benefits of these state and federal programs in light of recent and proposed changes to state and federal laws, to determine which programs to encourage in San Francisco.

Transferable development rights (TDRs) can be effective as a planning tool for redirecting development away from the sites of historic buildings, and may have some use in other sub-area plans. Limits on the demand for TDR affected by the administration of the annual limit on new office space should be evaluated to determine if this process and other constraints in the Downtown Plan conflict with the historic preservation goals of the TDR program.

Preservation easements can be the most effective long-term preservation tool available, other than fee-title ownership. Easement donations can also provide property owners with substantial tax deductions to offset the additional restrictions on historic properties. The City should evaluate whether a City agency should accept easements or manage an easement program for historic preservation, or whether more support should be given to local non-profit easement programs.

14. The City should facilitate public awareness and use of the State Historic Building Code. The State Historic Building Code was recently made mandatory for use in all local jurisdictions in California. The Department of City Planning and Landmarks Board, working with the Department of Public Works, the Board of Permit Appeals, and the State Historic Building Code Commission, should identify historic buildings that the SHBC applies to and develop administrative procedures for the use of the code (including appeals), and inform property owners and the rehabilitation industry of its provisions.

15. The City should apply for certification of its existing and revised preservation program under state and federal standards and guidelines for Certified Local Government programs, and for a share of the federal grant funds available for CLGs. Changes in the existing programs required to meet the standards and guidelines should be weighed against local needs and the costs of compliance, compared to funds available.

16. The City should prepare applications for certification of existing and proposed Article 10 historic districts and submit them to the State Office of Historic Preservation and the National Park Service under the National Register certified local historic district program. Owners of important individual landmarks who could benefit from federal and state tax incentives should be encouraged to nominate their property to the National Register. Technical assistance for nominations should be provided by the Department of City Planning and Landmarks Board. Some of San Francisco's most important historic property (e.g. the Civic Center and the Ferry Building), should be nominated for National Landmark or World Heritage status.

17. The City should maintain and support the role of non-profit historic preservation organizations in the City's preservation activities. Non-profit historic preservation organizations in San Francisco, particularly The Foundation for San Francisco's Architectural Heritage, Victorian Alliance, and the Western Office of the National Trust for Historic Preservation, have had a major influence in the City's historic preservation programs by conducting architectural surveys, preparing nominations for landmarks and historic districts, providing technical assistance and recommendations for the Downtown Plan and other sub-area plans, testifying before the Planning Commission, Board of Supervisors, and other agencies on preservation policies and development projects, and providing public information on historic preservation to enhance appreciation of the City's historic and architectural resources. These organizations have acted in many ways as the preservation conscience of the City. In the past five years, the relationships between the non-profit groups and the City administration has improved greatly, because the Planning Department and the Landmarks Board have relied on the non-profit's technical assistance and information as an extension of the City's resources. A close working relationship with the City administration has also greatly increased the credibility and productivity of the non-profit organizations. This symbiotic relationship should be continued and enhanced by the Department of City Planning and Landmarks Board by inviting non-profit group participation in all aspects of the preservation programs, and by continuing to rely on their staff and boards of directors. Whenever possible, the City should contract with or

through such groups for technical consulting work in historic preservation, when such work is not more appropriately done by in-house staff or professional consultants. The boards of directors for such groups should be a primary source for appointments to the Landmark Board and Planning Commission. The City should help sponsor and participate in technical workshops, conferences or other educational activities on preservation matters conducted by such groups, since it is now a national leader in historic preservation planning. In order to avoid major conflicts with such groups over specific plans or development projects, the Department of City Planning staff should consult with non-profit groups prior to making public recommendations affecting historic resources to the Planning Commission. The Planning Director and his staff should continue the practice of urging developers that propose development or rehabilitation projects affecting historic resources to consult with the non-profit groups before projects are presented to the Planning Commission or Landmarks Board for approval. Through these steps non-profit organizations will continue to serve as valuable technical resources to the City's preservation programs, rather than as adversaries. However, because of their independence from political or civil service constraints, it is important for such groups to maintain a certain degree of autonomy from official government policy and to continue to play a strong role of advocacy for historic preservation.

APPENDICES

Appendix A - Review of preservation programs in other cities

Appendix B - Bibliography

Appendix C - Footnotes and legal references

Appendix D - Procedures for Certified Local Government historic
preservation program

Appendix E - Professional qualifications standards, National Park
Service

APPENDIX A

REVIEW OF PRESERVATION PROGRAMS IN OTHER CITIES

A summary of the experiences of these cities is provided in Chapter 9.

1. NEW ORLEANS

a. Administering bodies

The City of New Orleans has three historic preservation commissions. The first, the New Orleans Historic District Landmarks Commission (HDLC), has jurisdiction over four districts as well as individual landmarks. The second, the Central Business District Landmarks Commission (CBDLC), has jurisdiction over three districts and 40 individual landmarks. The third, the Vieux Carre' Commission, was established in 1936 by a special provision of the Louisiana Constitution to deal only with the Vieux Carre'.

The HDLC currently has 13 commissioners: nine plus one for each of the four historic districts. Appointed by the Mayor for overlapping terms of four years, the members are not required to have any special training or expertise. The only requirement is that they be voters and residents of New Orleans. No official or staff member from another City agency is represented on the commission even in an ex officio capacity.

The CBDLC has 11 commissioners appointed by the Mayor for overlapping terms of four years. Unlike the HDLC, there are specific requirements for membership on the CBDLC. In addition to being residents of the City, members must be either property owners or have their principal place of business within the central business district. Nine of the members are selected from nominations made by specified civic groups including the American Institute of Architects, the New Orleans Savings and Loan League, the Chamber of Commerce, the Downtown Development District, the Retail Merchants Bureau, two preservation-oriented organizations: Historic Faubourg St. Mary Corporation and the Preservation Resource Center, and the Real Estate Board. Two other members are appointed at large. The latter three do not necessarily have to own property or have their principal place of business within the central business district. The composition of a larger percentage of business persons than preservationists on the

commission appears to be working well in the central business district. These property and business owners were reluctant to be regulated by a residential commission. Because of the public hearing process that is in place, the commission appears in most cases to be doing the "right" thing for preservation. In addition, the Chamber of Commerce will listen to recommendations of the commission and the City Council is more likely to uphold decisions on appeal since they were made by a commission "of their peers."

b. Basic authorities and appeal procedures

The HDLC has the authority to designate landmarks within its jurisdiction, subject to ratification of the City Council; historic districts are established by resolution of the City Council except in the central business district. The CBDLC has authority to designate landmarks and districts within the central business district, subject to City Council ratification. The boundaries of the Vieux Carre' historic district were established by constitutional amendment. Once districts or landmarks are designated, each of these three commissions has the final say in reviewing requests for alterations, demolitions, relocations, new construction, and other changes affecting the designated properties. All final decisions may be appealed to the City Council.

c. Staff support and position within City structure

The HDLC and CBDLC are staffed by a director and about eight staff members, including an architectural historian, building plan examiners who are architects, field inspectors, and clerical personnel. The Vieux Carre' Commission has a separate director and about 10 staff members. The HDLC and CBDLC have a combined annual budget of approximately \$220,000, while the Vieux Carre' Commission has an annual budget of between \$250,000 and \$300,000.

The commissions are separate and unattached boards under the city charter with distinct preservation responsibilities. The landmark commission staff is separate from the planning department staff. The commission director is on an equal level with the planning director. These directors answer to the HDLC and the planning commission, respectively. The historic commissions do not have authority over general zoning matters, that authority rests with the planning commission. Historic commission responsibilities are limited to authority over alteration, demolition, or new construction affecting landmarks or districts (see more detailed description of these authorities below).

The planning commission may, but is not required to, ask for

HDLC advice when dealing with general zoning matters affecting historic buildings, new construction, and aesthetics within and without historic districts. The planning commission does in fact request HDLC advice because of the landmark commission's recognized expertise in these areas, and often makes its approvals conditional upon getting a certificate of approval from HDLC even though the subject property is not within a historic district. All zoning proposals are developed by the planning department. HDLC reviews and comments on these proposals as to their effects on preservation. A good working relationship between the two departments was cited as one of the most important ingredients in the process.

c. Designated historic resources

Eight locally designated districts in New Orleans include close to 5,000 historic properties in addition to individually designated landmarks. Over 1,800 acres are covered by local historic districts; as many as 10,000 structures are located in neighborhood historic districts. Approximately 3,000 acres are covered by National Register districts which include up to 21,000 dwelling units. Forty-five percent of New Orleans' total housing stock is under historic district control, while 9 percent of the housing stock is covered by National Register status.

Criteria for designation are specifically set out in the ordinances. Three commission members are required for a landmark nomination, which is then decided by the commission. Except in the central business district, historic district designation must be initiated and established by the Mayor and City Council. Owner consent is not required for designations of landmarks or districts. Under the City's designations criteria, archeological sites, religious structures, and objects are among the types of resources that can be designated; interiors cannot be.

While there is no formal provision providing for a moratorium on permit applications while designations of landmarks are pending, determination of whether a particular structure meets landmark criteria is a part of the process of considering the application.

All buildings within the jurisdiction of historic commissions have been ranked in six categories which correspond to "treatment groups" or criteria for dealing with requests for alteration or demolition. The categories include: 1) buildings of national importance; 2) buildings of major architectural importance; 3) buildings of architectural or historic importance; 4) important buildings that have been altered; 5) buildings that contribute to the scene; and 6) unrated buildings. Categories used in the Vieux Carre' district are slightly different. All of

the commissions update the ratings from time to time, which sometimes results in a reclassification.

According to a local preservation official interviewed, the rating system works well in New Orleans. When a decision over an alteration or demolition is appealed to the City Council, this broadly constituted body of non-architects feels more comfortable with specific ratings and standards and will generally not allow alteration or demolition of a top-rated building. The City Council is more lenient with low-rated buildings in situations where there is a good replacement structure. Information about City rankings is provided to real estate agents in the City, which serves to get the information into the community and to make new buyers more aware. In response to the argument that ranking invites demolition of lower rated buildings which, while not significant on their own, may contribute to the overall character of an area, New Orleans seems to take the position that ranking at least creates a system of managed change and growth. Allowing some change and a degree of certainty as to which buildings can and cannot be changed increases the cooperation of property owners on preservation goals.

The New Orleans commissions have authority over demolitions, exterior alterations, signs, building relocation, and new construction within historic districts and have limited authority over street and landscape features. Each ordinance establishing a district or designating a landmark contains specific standards for alterations and new construction. The Secretary of the Interior's standards for rehabilitation are used as a general set of guidelines, but are not formally incorporated. The commissions may deny outright an owner's application to alter or demolish a structure; there is no requirement in New Orleans for a demolition delay period. When passing on an application, the commissions have the power to vary or modify adherence to the standards where, by reason of topographical conditions, irregularly shaped lots, or because of unusual circumstances applicable solely to the particular applicant, strict enforcement of the provisions of this ordinance would result in serious undue hardship particularly affecting the applicant. Any such modification or variance, however, must ensure harmony with the general purposes of the ordinance and must not adversely affect a historic district or designated landmark.

It is interesting to note that during the last three years less than 10 designated local landmarks or important buildings within historic districts have been lost to demolition, substantial alteration, fire or other causes.

d. Surveys and inventories

A citywide survey was completed within the last six months. The Mayor's office conducted the survey with participation by the commission staff. It was financed with CDBG funds. The actual survey work was accomplished by private consultants.

e. Other planning and zoning techniques

Although no special ordinance requires it, historic preservation appears to be given consideration in most planning activities in the City of New Orleans.

Four types of zoning mechanisms are being used for preservation purposes:

1. Zoning as a companion to historic districts; the best example of this type of zoning is in the Vieux Carre'. The zoning is consistent with the area's character and land use as well as its historic district status.
2. Historic district zoning; this type of zoning or zoning package imposes strict controls on an area to further historic preservation goals without formal designation as a historic district. An example was the Historic Marigny Zoning Package which did three things: stabilized the residential density of the area to encourage the maintenance of the architecture and lifestyle; allowed for a decrease in commercial use but not to the point that the neighborhood was no longer economically viable; and mandated retention of the buildings' scale. Although the zoning worked well for retention of the existing buildings, it did not cover specific design review of alterations. To meet this deficiency, the area later became a full-scale historic district.
3. Restrictive zoning; this is a form of "tight" zoning to discourage speculation, demolition, and major changes in the density of development.
4. Special or incentive zoning; this type of zoning restricts speculation and demolition while giving a development bonus for residential use.

These four zoning mechanisms appear to have made important contributions to the preservation of areas serving either as alternatives to historic district designation or as a first step toward designation. The major distinction between such zoning and historic districts is that the planning department develops and administers the zoning ordinances (the historic commissions

have no authority over any changes therein). Although the landmark commissions have an opportunity to review and comment on zoning proposals, once they are enacted their involvement ends unless there happen to be designated historic structures within the zones.

Another technique which has been used with some degree of success in New Orleans is "neighborhood redesign." Somewhat like a special design district, the concept is to focus public and private energies into the revitalization of a specified commercial area which will radiate into the surrounding area. Generally a joint venture between the City and merchants in the area, the program is under the "neighborhood commercial revitalization" provision of the City's federal assistance program.

Despite the zoning mechanisms outlined above, the underlying zoning in designated historic districts is not always consistent with the goals of preservation. While historic district commissions have no direct power in these cases, the commissions can, under a provision in their implementation ordinances, urge the planning department to study such problems.

f. Use of economic incentives

The Vieux Carre' Commission, Historic Faubourg St. Mary Corporation, and the Preservation Resource Center each accept preservation (facade) easements. The HDLC has the authority to hold easements, but has not done so to date. Easements appear to be a fairly successful preservation tool in New Orleans, although enforcement is cited as a weakness. A one-year-old tax abatement program for owners of historic structures has been used about 15 times and is anticipated to be an effective incentive. Federal investment tax credits have been a great success in the City, second only to St. Louis in usage. Current work is underway to update and sensitize the City's building code to historic preservation goals.

g. Education programs

Although the Preservation Resource Center, a private non-profit organization, probably plays the most important role in public education in the City, the historic district commissions participate in publication of survey findings, conduct workshops on rehabilitation techniques and other matters, conduct tours and events, and publish landmark and historic district brochures. The commissions have also developed slide shows for community audiences, a program for public schools and awards programs.

h. Special programs:

New Orleans participates with the federal government in making more effective use of the Advisory Council Review Process of Section 106 of the National Historic Preservation Act. The city has entered into a "Memorandum of Understanding" (MOA) with the Department of Housing and Urban Development (HUD) in regard to the use of federal funds in relation to historic buildings. The MOA requires that in each instance involving potential effects on historic properties, the applicable historic district commission must review the proposal. If this is not complied with, the MOA provides that the City will lose its federal funding.

2. NEW YORK

a. Administering body

New York City has a single Landmarks Preservation Commission which administers all historic districts and landmarks within the city's jurisdiction. The commission has 11 members appointed by the Mayor for three-year terms. Membership must include at least three architects, one historian, one city planner or landscape architect, and one realtor. The membership includes at least one resident of each of the five boroughs. The Mayor is required to consult with the Fine Arts Federation of New York and other similar organizations before making these appointments. No official or staff member from any other City agency or department is represented on the commission even in an ex officio capacity.

b. Basic authorities and appeal procedures

The Landmarks Preservation Commission has the authority to designate landmarks and historic districts in its jurisdiction subject to ratification by the City Board of Estimates. Once districts or landmarks are designated, the commission has the final say in reviewing requests for alterations, demolitions, relocation, new construction, and other changes affecting the designated properties. The ordinance does not provide for the appeal of final commission decisions to another City body.

c. Staff and position in City structure

The commission is a separate agency within the City with distinct preservation responsibilities. Its staff includes a director, appointed by the commission, and approximately 56 staff members including five managerial positions and 33 professional positions. Among the professional positions are a legal counsel, a planner, an urban archeologist, a public relations person, and 30 landmark preservationists required to have graduate degrees in

preservation or the equivalent plus experience in the field. Its budget is over \$1 million annually.

While the Landmarks Preservation Commission is on a similar level with the planning commission within the overall City structure, their regulatory authorities are different. The landmarks ordinance specifically states that the preservation commission does not have authority to regulate or limit height and bulk, yard areas, open spaces, density, location of trades and industries, or to create districts for such purposes. These things are within the charge of the planning commission. On the other hand, the ordinance gives the preservation commission the specific authority to impose regulations more restrictive than any other provision of law with respect to historic sites or districts.

After a property has been designated or included within a historic district, no alteration, reconstruction, or demolition can occur until the preservation commission has first reviewed and approved it. In addition, the preservation commission can ask the planning department to study zoning measures within the planning commission's authority as to their effect on historic sites or districts and may make recommendations to the planning commission with respect to amending the zoning resolutions applicable to properties within historic districts.

d. Designated historic resources

Approximately 48 historic districts, comprising over 17,000 properties, have been established in New York City. In addition, an estimated 750 landmarks have been listed. Most locally designated landmarks are listed in the National Register. There are between 45 and 50 National Register districts in New York City, and most are also designated as local districts. Specific criteria for the designation of landmarks and districts are spelled out in the ordinance establishing the preservation commission. The commission has the power to designate landmarks, interior landmarks (if accessible to the public), scenic landmarks, and historic districts. Properties which can be so designated include landscapes, sidewalk clocks, trees, fences, fixtures, street patterns, state and municipally owned sites, and archeological sites. Owner consent is not required for any designation.

Although there is no specific provision in the preservation ordinance providing for a moratorium on permit applications while designations are pending, an informal procedure exists. Each time a building is put on the calendar for designation, the preservation commission notifies the building department. The building department tells the owners of the building to show

proposed plans for alteration or demolition to the preservation commission. Permits are not issued by the building department until the preservation commission has reviewed and reported back. If the proposal is inappropriate, the preservation commission asks the building department to wait until the designation procedures are completed. No system of ranking or categorizing historic resources exists in New York City. In contrast to the position taken in New Orleans, the New York Landmarks Preservation Commission objects to ranking because it is seen as an invitation to demolish all but the most significant structures.

The Landmarks Preservation Commission has authority over demolitions, exterior and interior alterations, signs, building relocation, new construction within districts, street and landscape fixtures, and use to the extent it impacts the structure. In New York ordinances establishing individual districts do not generally contain specific guidelines for alterations, new construction, or other changes over which they have jurisdiction. Instead, fairly specific criteria for such review are set forth in the ordinance establishing the commission and additional guidelines have been adopted dealing with specific types of resources or fixtures. For example, sets of guidelines have been adopted for additions, sidewalk cafes, windows, air conditioners, and Broadway theaters. The Secretary of the Interior's standards have been used as a general guide by past commissions, but are not considered very helpful because they are too general for a regulatory type program which concentrates on specific review of individual changes.

The commission may deny outright an owner's application for alteration or demolition.

As part of the procedures for consideration of a request for a certificate of appropriateness regarding demolition, alteration, or other such change, the owner is allowed to make a request on the ground of insufficient return or hardship. If the preservation commission determines, based on information required to be provided by the owner, that there is a hardship or insufficient return, it may grant the owner's request even though it should otherwise be denied on the basis of applicable standards. As an alternative to granting the request, the commission is required to endeavor to devise a plan whereby the building may be preserved while rendering a reasonable return. Such plans may include the granting of a tax exemption, the remission of taxes, or the authorization of alterations, construction, or reconstruction appropriate for and not inconsistent with the purposes of the landmarks ordinance. It is interesting to note that during the past 21 years, out of a total of 11 hardship applications, there have been only five landmark

buildings demolished or substantially altered under this provision.

e. Surveys and inventories

A citywide survey of every tax lot in the City (approximately 850,000) is in process. The survey is being computerized. The preservation commission is conducting the survey with the aid of staff, consultants, trained volunteers, and student interns. Financed to date with Community Development Block Grants (CDBGs), a completion date appears to depend on the future availability of this funding.

f. Other planning and zoning techniques

Several other planning and zoning mechanisms have been used in New York City to further general preservation goals. These include transfer of development rights (TDRs), special purpose districts, and special permits such as zoning lot mergers.

Transfer of development rights (TDRs). New York has a specific provision for the transfer of development rights (TDRs) aimed at the preservation of architecturally or historically significant buildings. TDRs have been used both as a basis on which to deny permission to demolish or substantially alter a landmark and as an incentive to achieve preservation.

Only about ten TDRs have occurred to date. According to the Sanger Report, this lack of use is usually blamed on New York City's strict rules for transfer only to contiguous sites and its requirement for a special permit to accomplish a transfer. In addition, provisions allowing for zoning lot mergers and bulk and use modifications weaken the market demand for TDRs. Several notable examples have occurred in connection with the creation of special zoning districts, which allow more freedom in choosing transferee lots.

San Francisco's recently enacted Article 11 provides a TDR scheme for the downtown conservation districts which appears to address most of the limiting factors pointed out in the Sanger Report. The success of San Francisco's program to date is discussed elsewhere in this report.

Special purpose districts. New York has created special zoning districts to address the preservation of specific blocks with concentrations of significant older buildings, often in order to make specific provisions for new development and transfer of development rights from older buildings to the sites of new buildings. Where there are concentrations of older buildings, the use of these special zoning districts appears to be a

technically feasible means of retaining the buildings. However, since the Landmarks Preservation Commission has no jurisdiction, this zoning tool alone does not seem to be an adequate preservation tool for historically significant areas or structures. Designations as landmarks or historic districts are still important to the preservation of the historic fabric and detail. Ideally, such zoning mechanisms should be used to reinforce the historic district or landmark protection.

Several of these special purpose districts are described below:

Special Little Italy district. The general goals of this district sound very similar to those of a historic district ordinance. Two are particularly noteworthy: "(a) To preserve and strengthen the historical and cultural character of the community" and "(f) to discourage the demolition of noteworthy buildings which are significant to the character of the area." Twenty-two significant buildings are identified and listed in the ordinance. Demolition or alteration of these buildings is prohibited unless approved by special permit of the planning commission after a public hearing. The planning commission also governs uses, FAR, lot coverage, height and setback, facade or storefront treatment, open space, landscaping, sidewalk improvements, parking, and signs and encourages rehabilitation or conversion of existing buildings through incentives. TDRs are not allowed in this district. The Landmarks Preservation Commission does not have an opportunity to review any proposed demolitions or alterations to the buildings within the district unless they are designated as landmarks under the preservation ordinance.

Special Atlantic Area district. The general purpose of this district is the preservation of scale and form, street life, and desirable architectural features, along with the promotion of new development. Special standards are set out for new buildings and storefronts. For a list of designated buildings, alterations must comply with certain standards of a non-preservation nature. No demolition is allowed within the district unless a building permit is obtained for the new development and there is proof of adequate financing. No TDRs are allowed. The preservation commission has no review authority.

Special South Street Seaport district. The general goals of this district are to encourage preservation,

restoration, and redevelopment of the area into an "environmental museum" having associated cultural, recreational, and retail activities. TDRs are used to carry out the purposes. Again, the planning commission, not the preservation commission, governs.

Special theater district. Intended to encourage theater use and to preserve existing older theaters, this district has not been successful in preserving historic structures.

Special permits. When a landmark building is involved, exemptions are allowed to height and setback regulations and special floor area requirements. In addition, the planning commission is allowed to prescribe conditions and safeguards and to prohibit certain uses based on a report from the preservation commission.

In all designated historic districts, the planning commission may, upon application of the preservation commission, allow modification of use and bulk regulations, increase floor area, waive height, setback, and parking requirements, and allow enlargement on landmark sites (called merged zoning lots). As mentioned above, TDRs are allowed to adjacent sites pursuant to special permits.

Studies to determine zoning consistency. In addition to the techniques discussed above, the preservation commission can request the planning department to study existing zoning measures to determine how they affect historic districts. One such study on the consistency of zoning in historic districts resulted in downzoning of the historic areas. The planning commission has also repealed a mechanism to add bulk to buildings in return for gifts of park acreage upon a finding that the mechanism was creating a threat to small historic buildings. The planning department is currently studying the effect on historic districts of community facility use allowances to build on rear yards. This study approach to determining the consistency of zoning with historic preservation goals seems to work fairly well in New York City, and should be examined for its potential use in San Francisco.

It is interesting to note that in New York City, limiting heights has been so effective in preserving areas that this preservation technique is being used outside of historic districts; that is, landmark-type protection is being used to preserve neighborhood character and scale. A question is emerging as to whether the issues in some of these areas are really zoning issues or landmark issues.

g. Use of economic incentives

The New York Landmarks Conservancy accepts preservation easements. Although easements do not appear to play a large role in preservation in New York, they do provide a means of supplementing the City's preservation program. Their most effective role is to reach what the landmarks ordinance cannot; for example, private interiors and light and air around squares or parks.

Two kinds of property tax incentives are used for preservation purposes. First, in the event of a hardship showing, the owner can request tax abatement. Because there are only a few such hardship findings, this tax abatement procedure is rarely used. More often used, but only in limited areas, is a state law providing property tax relief to owners of historic properties.

For the same reason as that given in the Sanger Report for San Francisco's downtown, federal investment tax credits (ITCs) for rehabilitation have not worked well in Manhattan. The reason is that, due to the "substantial rehabilitation" test, larger buildings will not benefit unless they have been in the same ownership for a long time. On the other hand, small buildings, particularly those on valuable land, would benefit especially where retail use is possible. Consequently, ITCs have been an effective incentive in New York's outer boroughs where more than \$2 billion worth of rehabilitation has taken place as a result of them.

While there is no special historic building code in effect in New York, exceptions to building code provisions are generally allowed on a case-by-case basis if the building is historic.

h. Use of regulations

Similar to the California Environmental Quality Act (CEQA), New York's environmental law is triggered by proposals to demolish or substantially alter historic buildings. In New York, the law is applicable to all sites listed on the national, state or local registers or by a request for approval of a new project, the construction of which necessitates the removal of or causes some other impact on a historic resource.

i. Education programs

Although many private organizations exist in New York with major roles in preservation advocacy, lobbying, and public education (the most important of which is the Municipal Arts Society), the preservation commission has participated in several

significant public education programs. These have included cultural resource survey training, workshops on maintenance of historic buildings, publication of landmarks and historic district brochures, slide presentations, tax act lectures, and volunteer training programs.

j. Special programs

In New York, community boards are created by city charter to play an advisory role to the planning commission. Appointed by the City Council, the boards are relatively political. Although they are not solely preservation oriented and have no specific duty to advise the preservation commission, the commission does go to them to request informal comment on all designations and requests for certificates of appropriateness for demolitions and alterations.

3. BOSTON

a. Administering bodies

The City of Boston has several preservation commissions. The Boston Landmarks Commission (BLC) has jurisdiction over all landmarks in the City and all districts except for two which were created by separate special acts of the legislature, the Beacon Hill historic district and the Back Bay historic district. Each of these has its own commission.

The BLC has nine members and nine alternate members. Members are appointed by the Mayor for three-year terms subject to confirmation of the City Council. Each member must possess demonstrated knowledge and concern for conservation and enhancement of the City's physical fixtures. The commission is required to include an architect nominated by the Boston Society of Architects, a planner nominated by the regional chapter of the American Institute of Planners, a real estate professional nominated by the Boston Real Estate Board, an architectural historian nominated by the Society for the Preservation of New England Antiquities, a landscape architect nominated by the Boston Society of Landscape Architects, and someone representing the Chamber of Commerce. Each of the six individual historic districts established by the BLC has its own sub-commission made up of three members of the BLC and two members from the community. There is currently an effort being made to change the majority on these district commissions from BLC to community members.

b. Basic authorities and procedures

The BLC has the authority to designate landmarks and districts subject to the approval of the Mayor. The City Council may override any commission designation with a two-thirds vote. Following designation, the BLC (as to landmarks) and the individual district commissions (as to historic districts) have final say in reviewing requests for alterations or demolitions.

Designations or determinations on requests to alter or demolish a designated structure may be appealed to the superior court for the county. Likewise, the BLC or a district commission may petition the superior court to enforce the ordinance or its decisions pursuant to the ordinance.

c. Staff support and position within City structure

The BLC, the Beacon Hill Commission, and the Back Bay Commission are staffed by seven professionals and several consultants. Professionals include an executive director, a director of survey and planning, an assistant director of survey and planning, an executive secretary for the Beacon Hill district, an executive director for the Back Bay district, and a staff architect. Consulting teams are established for surveys. The annual budget for the office is approximately \$200,000.

The BLC is one of two commissions located in the City's Environmental Department. Up until about three years ago, the BLC was within the Boston Redevelopment Authority (BRA), which is equivalent to the San Francisco Planning Department and the Redevelopment Agency combined. The BRA is the strongest City entity in the downtown areas and is presently developing a downtown plan based on San Francisco's. BLC has some input into the BRA planning process but no direct authority. BRA has a preservation architect on its staff. Although the move from BRA to the Environmental Department has resulted in more independence for the BLC, the observation has been made that communication may be more difficult despite a close working relationship between the staffs.

d. Designated historic resources

Eight locally designated districts include approximately 6,700 historic properties. Six additional districts are in the process of being established. Fifty-one local landmarks have been designated to date.

The commission, by a two-thirds vote of all its members, may designate any landmark, landmark district, architectural conservation district, or protection area. Detailed criteria for

each of these four types of designations are set out in the ordinance establishing the BLC. It is interesting to note that inclusion in the National Register automatically qualifies a property for designation as a landmark or district at the local level.

Ranking or "grouping" is just emerging in Boston as a vehicle to evaluate demolitions on a case-by-case basis. To date the buildings in only one historic district have been ranked. Ongoing neighborhood surveys are incorporating the new system. As this ranking system has just been started during the past year, inadequate experience exists to judge its potential for success. BLC's "Evaluation of Significance System," as the grouping system is called, is roughly broken down as follows:

- Group I Buildings are considered to have national significance and merit designation as Boston landmarks and for listing in the National and State Registers of Historic Places. Designation as a Boston landmark involves protection against demolition and review of proposed exterior alterations. Interior spaces can also be specifically designated and protected.
- Group II Buildings are considered to have the highest significance to the City of Boston, the Commonwealth, and the New England region. They are also considered to merit designation as Boston landmarks and listing on state and national registers. Same consequences of designation as Group I.
- Group III Buildings are considered to be of significance to the City of Boston meriting designation as Boston Landmarks and possible eligibility for individual or district listing on the national and state registers.
- Group IV Buildings are considered important to the character of their particular street, neighborhood, or area. They are not significant enough to be designated as Boston landmarks.
- Group V Buildings are of little architectural or historical interest, but may be considered to make a minor contribution to the streetscape. Not eligible as Boston landmarks.
- Group VI Buildings are considered visual intrusions.

Of the four types of designations, the "protection area" designation is the least common and should be considered for its potential use in San Francisco. An area can be so designated

upon a finding by the commission that the area is visually related to a landmark, landmark district, or architectural conservation district but is not necessarily of sufficient historical, social, cultural, architectural, or aesthetic significance to warrant designation as such. In determining the boundaries of a protective area, the commission considers (a) major views and vistas of and from the landmark, landmark, district or architectural conservation district; (b) pattern of roads, paths, and alleys which determines the size and shape of land parcels and controls vehicular and pedestrian movement to and from the landmark or district; (c) contrasts between the scale and density of the landmark or district and the improvements under consideration for designation as a protection area; and (d) contrasts between the arrangement of structures, landscape, and open space features of the landmark or district and the improvements under consideration for designation as a protection area.

Among the types of properties which can be designated by the BLC are archeological sites, state and municipally owned resources, objects, religious structures, and the interiors of landmarks.

The Mayor, any 10 registered voters, or any commission member may petition the commission to begin the designation process. An investigation and report on historic and architectural significance of the structure, sites, or objects to be designated are required prior to designation. This report is to include an indication of the economic status of the property or properties; a recommendation as to the boundaries of any proposed landmark, district, or protection area; and recommended standards to be adopted by the commission in carrying out its regulatory functions. All recommendations must be made in consideration of any master plan, zoning requirements, projected public improvements, and development plans applicable to the section of the City to be affected by the designation. As to landmarks, the report is prepared by the commission; in the case of a district or protection area, the report is prepared by a study committee consisting of five members of the commission and six persons appointed by the Mayor and confirmed by the City Council who have demonstrated interest in the district or area.

Following completion and distribution of the report, a noticed public hearing is held. Owner consent is not required prior to designation. While there is no formal provision providing for a moratorium on permit applications while designations of landmarks are pending, the building department withholds permits on the commission's request until the designation process is complete.

The BLC has authority over demolitions, exterior alterations, interior alterations (if the interior has been designated), signs, building relocation, new construction within districts, and street and landscape features. As a part of each designation, the BLC adopts regulations specifying standards and appropriate criteria to be applied by the commission regarding alterations, demolitions, or other changes. The Secretary of the Interior's standards for rehabilitation are not incorporated into these regulations. In fact, the district-by-district standards and criteria are more specific.

The commission may deny outright an owner's application to make the alteration, demolition, or change; there is no requirement in the Boston ordinance for a delay period.

When deciding upon an application, the commission may decide to issue a certificate of exemption from the standards and criteria if it finds that they would impose a substantial hardship on the applicant. The applicant is required to produce evidence of such hardship showing that the property would not be capable of earning a reasonable return. Although BLC is not required to do so, it may in such instances postpone its final decision on the application for a 90-day period during which time it would try to devise a plan to preserve the landmark.

Of all "previously" designated local landmarks and important structures within districts, none have been demolished and only one has been substantially altered during the last three years. Three were partially destroyed by fire or other catastrophe. In spite of this relatively low loss record, it should be pointed out that since designation of landmarks often occurs in emergency situations after proposals for alteration or demolition have been made, the solution often involves a compromise which is unacceptable to preservationists.

e. Surveys and inventories

A downtown survey has been completed and a neighborhood survey is 70 percent complete. The BLC conducted the surveys through private consultants with financing from the Department of the Interior. Staff salaries were used as the commission's matching share. Approximately 32,500 buildings have been surveyed; 10 percent of these were identified as potentially historic. These have been mapped, basic data has been collected, and inventory forms completed. As noted above, a new ranking or grouping system is being used in the neighborhood surveys.

f. Other planning and zoning techniques

The zoning underlying historic districts in Boston is not

always consistent with the goals of preservation. While restricted rooftop zones and height limitations within the district boundaries have relieved some of the pressure, these zoning mechanisms have also created some confusion as to whether the BLC's or the planning commission's review takes precedence. The Boston Planning Department is also working on a downtown plan proposal modeled on San Francisco's.

g. Use of economic incentives

Several economic incentives have operated with some success in Boston. The BLC accepts preservation (facade) easements. Although easements appear to be fairly successful preservation techniques, some enforcement problems have arisen. The state has no provision for property tax abatement to encourage preservation. Building inspectors are allowed flexibility in the application of building code provisions to historic buildings. Although this flexibility to grant code exemptions may not be a powerful incentive to rehabilitate historic structures in Boston, it removes some restrictions and eliminates expenses which would otherwise prevent rehabilitation.

The Federal investment tax credits (ITCs) have been used by approximately 197 locally designated properties during the past six years. They have been used all over the City and are considered to be a very successful preservation tool. Most of Boston's historic districts have been certified for tax act purposes, and 14,000 new dwelling units have been created through tax act projects.

Community Development Block Grants (CDBGs) have been made available to low-income elderly people in the South End historic district for work required on residential structures. Urban Development Action Grants (UDAGs) have been used for historic preservation purposes through the Boston Redevelopment Authority. In addition, local foundations have provided matching grants for preservation activities.

h. Regulations

Similar to the California Environmental Quality Act (CEQA), Massachusetts has an environmental statute which applies to properties listed in national, state, or local registers. It is triggered by requests for demolition or other building permits or by requests for approval of construction projects. If a building is not listed on any of registers, however, routine demolition permits are not covered.

i. Education programs

The BLC publishes landmark and historic district brochures or reports and makes slide presentations available to community audiences. Further publications are pending subject to funding.

j. Special mention

The Boston Preservation Alliance is an alliance of about 40 neighborhood organizations which provides input to the landmarks commission. As the organization is not officially sanctioned by the City, its exact role in the process depends on the issues of the day.

4. SEATTLE

a. Administrative bodies

The Seattle Landmarks Preservation Board (LPB) is responsible for all individual landmarks within the City's jurisdiction. The LPB also has some authority over historic districts, although each of the six historic districts in Seattle has its own board or review committee established by City Council ordinance at the time of its designation.

The LPB has 11 commissioners appointed by the Mayor and subject to confirmation by the City Council. Each has a three-year term. The City planning commission has a representative on the board. The LPB is required to include people with expertise in the following areas among its membership: architecture, real estate, history, finance, landscape architecture, and engineering. Three members are chosen without regard to occupation or affiliation, but each must have demonstrated sympathy with the purpose of the ordinance.

b. Basic authorities and appeal procedures

The LPB has the authority to designate landmarks within its jurisdiction. There is no procedure for the appeal of the designation decision to another City body. As a second step in the process, controls and incentives are established on each landmark site through negotiation with the owner. If the LPB and the owner cannot agree, the matter goes before the City Hearing Examiner. At this point the hearing examiner must make sure that the owner will not be deprived of a reasonable economic return as a result of application of the ordinance. Decisions of the hearing examiner may be appealed to the City Council. It is significant to note that review of the hearing examiner's decisions on appeal is based only on the record of the

proceedings below. It is not a de novo procedure; i.e., there is no right to present further evidence on appeal.

The LPB has the authority to decide whether to grant or deny certificates of appropriateness on applications to demolish or alter designated landmark sites. LPB's decision may be appealed to the hearing examiner, whose decision is final unless the action proposed involves demolition or has an estimated cost of \$100,000 or more. In any such case, appeal may be made to the City Council.

The authorities of the six historic district boards or review committees vary with the individual ordinances which established the districts. Four of these districts (Ballard, Pioneer Square, Pike Place Market, and the International District) have their own boards. Of these, two (International District and Pioneer Square) are advisory to the director of the Department of Community Development. Pike Place Market historic district has independent review authority similar to that of the LPB, and its decisions may be appealed to the hearing examiner. Ballard Historic District also has independent review authority; its decisions may be appealed first to the LPB, then to the hearing examiner. Columbia City and Howard Belmont historic districts each have review committees which are advisory to the LPB. These two, the most recently designated districts, have the least authority among the boards. In effect, they are under the jurisdiction of the LPB. The most independent board, that of Pike Place Market historic district, was the first to be created. The trend is toward advisory roles for local district commissions.

c. Staff support and position within City structure

The LPB and the individual district boards and committees together have a staff of five professionals in addition to clerical support. The director of the Department of Community Development (DCD) appoints a member of his or her staff to act as the City's Historic Preservation Officer, who heads up this staff. Although reporting to the director of DCD, it is significant that the powers of the Historic Preservation Officer are spelled out in the ordinance establishing the LPB and appear greater than those of the director of the DCD. The Historic Preservation Officer has access to all city departments in the formulation of policies and activities. The preservation program has an annual budget of around \$300,000. The LPB is an independent City body with more power than Seattle's planning commission, which is advisory in nature.

d. Designated historic resources

Five existing historic districts and one special review district comprise almost 350 individual sites. There are 160 individually designated local landmarks. A total of 115 sites have been listed in the National Register of Historic Places, of which 64 are also designated as local landmarks. Five National Register historic districts have been established and another is pending. The boundaries of these are roughly the same as the existing local historic districts.

Criteria for individual landmark designations are specifically set out in the landmarks ordinance. Any person, including the Historic Preservation Officer and any member of the board, may nominate a site, improvement, or object for designation as a landmark. Nominations are reviewed for adequacy by the Historic Preservation Officer, who may ask that additional information be provided. Owner consent is not required for designations. Under the City's designation criteria, the following are among the types of resources which can be designated as landmarks: municipally and state owned sites, interiors (about 20 have been designated), religious structures (about 20 churches have been designated), and objects (e.g. bridges, clocks). There is no ranking of landmarks. The ordinance contains a provision providing for a moratorium on the issuance of building permits while landmark designations are pending.

Historic districts are established by separate and individual ordinances of the City Council which set out the boundaries and criteria for designation of the district, establish the review body, and provide procedures for preservation of the district. District designations are a result of recommendations of the LPB and the City's Urban Development and Housing Committee.

The LPB and historic district bodies have review authority over demolitions, exterior and interior building alterations, signs, relocation, street and landscape features, and new construction within historic districts. A separate set of specific design guidelines for alterations and construction has been adopted for each individual historic district. Pike Place Market, Pioneer Square, and the International Special Review District are also subject to controls over the uses to which the buildings are put. As to individual landmarks, the LPB follows a specific set of guidelines for considering alterations or other proposed changes. Although not required by ordinance, the Secretary of the Interior's standards are followed by the LPB.

The LPB may deny an owner's application to alter or demolish a structure within its jurisdiction. In addition, the board may suspend its order granting application for a 60 day period during

which time the board must attempt to prepare a plan which will preserve the site while rendering it capable of realizing a reasonable return. This delay provision has, however, never been used. It is estimated that a total of 10 designated historic structures have been demolished, substantially altered or otherwise lost during the past three years.

e. Surveys and inventories

A citywide inventory was accomplished by the staff of the Office of Urban Conservation in 1979. Financed with federal historic preservation funds, between 800 and 900 important structures were identified. Although it appears that this inventory needs updating and is probably not adequate to support designations, survey work is not among current program priorities.

f. Other planning and zoning techniques

Although there is no historic preservation element in Seattle's comprehensive plan, the landmarks preservation ordinance requires actions under the ordinance to conform to the City's existing comprehensive plan.

One of the primary types of zoning mechanisms which has been used in Seattle to promote historic preservation goals is its special review district procedure. The purposes for which these districts may be established include preservation of areas of historic note or architectural merit; providing assistance to property owners in maintaining the character of commercial and residential neighborhoods; and assisting in the redevelopment of declining neighborhoods. Special review districts provide an additional measure of land use incentives and controls. Development guidelines may be included in the ordinance establishing the district. Such guidelines may provide for the modification of bulk and use regulations and other zoning provisions in order to allow and encourage or to limit and exclude structures, design characteristics, and uses which would detract from the unique values of the district. The ordinance may or may not establish a special review board. The design review district concept appears to be a fairly successful preservation tool in Seattle, particularly when used in concert with historic landmarks and district controls.

Two special design districts should be mentioned: Pioneer Square special review district and International special review district. The Pioneer Square special review district is also a designated historic district. One of the primary purposes of designating it a special review district was to ameliorate the adverse impact which the construction of the King County domed

stadium was expected to have upon the cultural and ethnic values of the Pioneer Square area and to protect the area from the proliferation of parking lots and automobile-oriented uses. Although a special review board was established, the ordinance specifically provides that all applications for changes in the exterior appearance of existing structures or for the construction of new structures within the Pioneer Square historic district will be considered only by the Pioneer Square preservation board.

The International special review district is similar in purpose to Pioneer Square. Its review board can control parking, signs, bulk, uses, and exterior building finishes. In addition, demolition of a specified list of structures is prohibited and minimum maintenance standards are required for all buildings located within the district. Because the area has not yet been designated as a historic district, the special district review body considers any proposed changes or requests for demolition. The landmarks board has input only as to individual structures which happen to be designated as landmarks.

To address the issue of the consistency and compatibility of underlying zoning with the goals of preservation, Seattle is in the process of rezoning neighborhood commercial areas to remove some of the pressure to replace historic structures with larger ones. Another mechanism used in Seattle for making land use controls more compatible with preservation is to allow exceptions to the zoning process. As mentioned earlier, the landmarks ordinance provides that controls and incentives will be established for each landmark site at the time of designation. Among the incentives which can be granted to the owner are rezoning, conditional use permits, and transferable development rights (TDRs).

A phenomenon similar to that noted in New York City and San Francisco is occurring in Seattle. Because of the apparent success of preservation districts and controls, neighborhoods are trying to use preservation tools as land use tools in areas that probably should not qualify as historic districts. If historic district or special design district techniques are used in a looser, more liberal way, it is feared that the landmark protection will become diluted as the limited landmark staff becomes too busy to deal adequately with the more historic structures and areas. A need seems to be growing in Seattle and elsewhere for a new type of district for resources of lesser historic significance, perhaps called "urban design districts," where control and design review functions rest at or close to the community level.

The recently adopted Land Use and Transportation Plan for

Downtown Seattle contains a policy on historic preservation. This policy provides that the preservation, restoration, and re-use of individual historic buildings and groupings of buildings shall be encouraged and enhanced through the continuance of existing preservation regulations, the provision of new incentives for retention of buildings most threatened by development pressures, and new incentives for in-fill development within historic districts. In addition, reference to historic preservation is made in other policies of the plan such as those relating to uses, building heights, building scale, development standards, street level use, signs, and transfer of development rights. In each of these areas, deference is given to regulation through historic district plans or guidelines developed and administered by the appropriate historic or special review district.

g. Use of economic incentives

As mentioned above, the landmarks ordinance provides that economic incentives can be granted to owners as compensation for the imposition of controls on designated sites. These include tax relief, conditional use permits, bonuses, rezoning, vacation of streets, planned unit development, TDRs, facade easements, gifts, preferential leasing policies, grants, and beneficial placement of public improvements and amenities. All City authorities are given the specific authority to take actions within their powers to grant such incentives. Some of these incentives have been incorporated into individual City codes. Although all of the above listed incentives have not been used, many have been successful in encouraging preservation activities.

The Office of Urban Conservation accepts facade easements, as does the Washington State Office of Historic Preservation. Easements appear to be fairly successful as "deal sweeteners" for preservation projects.

Washington law contains a mechanism whereby local governments can provide property tax relief to owners of historic structures. Effective in July 1985, this legislation provides for a 10-year exclusion from assessed value of the cost of substantial improvements to properties listed on the National Register or on a local register. The property must be protected by a covenant between the owner and a local preservation review board. To be eligible, the cost of the rehabilitation must be 25 percent or more of the assessed value of the property prior to rehabilitation. Since the law became effective, 11 commercial properties have taken advantage of it. Although it looks like it will be an effective incentive for commercial properties, the threshold seems too high to attract residential properties.

Federal investment tax credits (ITCs) have been a successful preservation tool in Seattle; approximately 95 locally designated historic properties have taken advantage of them in the last 10 years.

Seattle has adopted the Uniform Building Code (UBC), including section 104(j) which allows some deviation from the standard code requirements for repairs and alterations necessary for the preservation, restoration, or rehabilitation of designated historic structures. The UBC appears to be working well with regard to historic buildings in Seattle.

Urban Development Action Grants (UDAGs) have been used to promote preservation in Seattle. HUD Section 312 rehabilitation loans have been available to residential properties and small businesses in the Columbia City historic district and the International special review district. HUD Section 8 monies have been targeted to the International District and Pioneer Square historic district. In addition, tax-exempt bonds have been used to rehabilitate structures for housing purposes.

h. Educational programs

The Landmarks Preservation Board plays a role in public education by publishing survey findings, conducting tours and events, publishing landmark and historic district brochures, and making slide presentations to general community audiences.

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APPENDIX B

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APPENDIX C

FOOTNOTES & LEGAL REFERENCES:

1. Cal. Govt. Code Sections 65300 et seq. (West 1966); see also Perez, The Local General Plan in California, 9 San Diego L. Rev. 1 (1971).
2. San Francisco Charter, Section 3.524.
3. As of November 1979, 29 California cities and counties had adopted historic preservation elements for their general plans.
4. San Francisco Charter, Section 3.527.
5. Section 65860 apparently does not impose consistency requirements on the issuance of conditional use permits; see Hawkins v. Marin County, 54 Cal. App. 3d 586, 126 Cal. Rptr. 754 (1976).
6. Cal. Govt. Code Sections 25373, 37361, 65850.
7. Bohannon v. City of San Diego, 30 Cal. App. 3d 416, 106 Cal. Rptr. 333 (1973).
8. Penn Central Transportation Co. v. New York City, 438 U.S. 104, 132 (1978).
9. These guidelines are currently in the process of being updated.
10. **The Mills Act:** Cal. Govt. Code Sections 50280-50289 (West 1983); Calif. Const. art. XIII Section 8; Cal. Pub. Res. Code Sections 5031-5033 (West 1984); Cal. Rev. & Tax. Code Sections 439-439.4 (West Supp. 1985).
11. "Impact of Property Tax Exemptions on the Average Homeowner," December 31, 1975. Submitted by State of Oregon, Budget Division, Bureau of Management and Budget.
12. **Open Space Easement Act of 1974:** Cal. Govt. Code Sections 51070-51097 (West 1983); Cal. Rev. & Tax. Code Sections 421-423 (West Supp. 1985).
13. **Conservation Easements Act of 1979:** Cal. Civ. Code Sections 815-816 (West 1982); Cal. Rev. and Tax. Code Section 402.1 (West Supp. 1985).

14. **Gifts of Easements:** Cal. Rev. & Tax. Code Sections 17201, 17241, 24357.2, 24357.7 (West Supp. 1985); 26 U.S.C. Section 170; 26 C.F.R. Section 1.170A-1 et seq.
15. **Estate Tax Savings:** Cal. Rev. & Tax. Code Sections 13301-13303 (West Supp. 1985); 26 U.S.C. Section 2055.
16. **State Historical Building Code:** Cal. Health & Safety Code Section 18954 et seq. (West Supp. 1985); 24 Cal. Admin. Code Section 8.
17. **The Uniform Building Code:** International Conference of Building Officials, Uniform Building Code.
18. **Marks Historical Rehabilitation Act of 1976:** Cal. Health & Safety Code Sections 37600-37884 (West Supp. 1985).
19. **California Environmental Quality Act of 1970 (CEQA):** Cal. Pub. Res. Code Section 21000 et seq. (West 1977); Cal. Admin. Code, tit. 14 Section 15000 et seq. (1983).
20. 106 Cal. App. 3d 893, 165 Cal. Rptr. 401 (1st Dist. 1980). For a detailed discussion of this case and other historic preservation litigation under CEQA, see J.B. O'Connell, Historic Preservation in California, A Legal Handbook, Stanford Environmental Law Society, 1982, pp. 31-35.
21. Cal. Pub. Res. Code Section 21083.2 (West Supp. 1985).
22. Procedures for a Consultant Initial Study (ER 0-7), October 1982; Format and Guidelines for Preparing an Environmental Impact Report (ER 8), April 1983; Summary List of Categorically Exempt Projects, January 1983; and Environmental Review Process Summary.
23. Criteria for qualification, matching requirements, and information on applications are available from the California State Office of Historic Preservation (OHP), Department of Parks and Recreation. See also "Procedural Guide, Historic Preservation Component, California Park and Recreational Facilities Act of 1984," dated October 1985 and published by OHP. Please note: a redevelopment agency is not an eligible unit of local government under the provisions of this act.
24. 16 U.S.C. Section 470 et seq. Originally enacted in 1966; revised in 1976; significantly amended by P.L. 96-515 (H.R. 5496) on December 12, 1980.
25. National Park Service regulations for the National Register nomination process are found at 48 Fed. Reg. 46306 (October 12, 1983) (codified at 36 C.F.R. sections 60.11 and 60.12).

26. Final regulations for approved state and local government historic preservation programs, incorporating changes required by the 1980 amendments, are codified at 36 C.F.R. Section 61, 49 Fed. Reg. 14890 (April 13, 1984).

27. Regulations implementing Section 106 are found at 36 C.F.R. Section 800 (1979).

28. Federal regulations relating to ITCs for qualified rehabilitated buildings are found at 49 Fed. Reg. 9302 (March 12, 1984) (codified at 36 C.F.R. Section 67).

29. Federal Regulations governing charitable contributions are located in 48 Fed. Reg. 22940 (May 23, 1983) (to be codified at 26 C.F.R. Sections 1, 20 and 25).

30. 42 U.S.C. Section 4321 et seq. (1976).

31. Regulations to implement the procedural provisions of NEPA were revised and published at 43 Fed. Reg. 55978 (November 29, 1978) (to be codified at 40 C.F.R. Section 1500 et seq.).

STATE OF CALIFORNIA

PROCEDURES FOR CERTIFIED LOCAL GOVERNMENT
HISTORIC PRESERVATION PROGRAM

INTRODUCTION

The 1980 amendments to the National Historic Preservation Act of 1966 provide for the establishment of a Certified Local Government (CLG) Program. This program allows for direct local government participation in California's comprehensive statewide historic preservation plan.

The CLG Program encourages the preservation of significant cultural resources by promoting a partnership between local governments and the State of California. Local involvement in preservation issues permits a CLG to assume a leadership role in the preservation of the community's cultural heritage and to have a formal participation in the National Register nomination review process. Local interests and concerns are integrated into the official planning and decision-making processes at the earliest possible opportunity.

Preserving historic properties as important reflections of our American heritage became a national policy through passage of the Antiquities Act of 1906, the Historic Sites Act of 1935, and the National Historic Preservation Act of 1966. In part, the National Historic Preservation Act of 1966 instructed the Federal Government to assist local governments to expand and accelerate their historic preservation programs and activities. Since enactment of the National Historic Preservation Act of 1966, the historic preservation expertise and activities of local governments have significantly increased. The act, however, provided no opportunity for local governments to be involved formally in the national historic preservation program administered by the Department of the Interior's National Park Service (NPS). Lack of formal participation by local governments often meant that historic preservation issues were not considered until development planning was well under way. This often resulted in preservation/land development conflicts causing project delays and increasing costs. In addition, opportunities frequently were lost for preservation-oriented development that could satisfy both preservation and development goals.

In recognition of the need to involve local governments in historic preservation, the 1980 amendments to the 1966 act provided a specific role for local governments in the national program. The Secretary of the Interior (Secretary) is required by the amended legislation to develop regulations for the certification of local governments and for the allocation of Historic Preservation Fund (HPF) monies by states to certified local governments. To qualify for certification, the amended legislation specifies that local governments must have certain administrative and legal capacities. This legislation directs states with approved state historic preservation programs to develop a mechanism for the certification of qualified local governments. Once certified, a local government will be included in the process of nominating properties to the National Register of Historic Places and will be eligible to apply to the state for a share of the state's annual HPF allocation.

At least ten percent (10%) of California's annual HPF allocation shall be designated for transfer to the CLGs. CLGs receiving HPF grants shall be considered subgrantees of the state. All CLGs shall be eligible to receive funds from the CLG share of the state's local annual HPF grant award. The state, however, is not required to award funds to all governments that are eligible to receive funds. At such time as Congress may appropriate more than \$65,000,000.00 to the HPF, a different distribution formula will be in effect, resulting in a proportionately larger share to the CLGs.

Historic Preservation Fund grants shall be awarded to CLGs on a 50/50 matching basis. The matching share is a requirement to maintain consistency with standard federal allocations to state and to ensure standard accountability in fiscal management. Local financial management systems shall be in accordance with the standards specified in the federal Office of Management and Budget (OMB) Circular A-128 and shall also be auditable pursuant to the federal General Accounting Office's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

The California CLG program offers local governments an opportunity for involvement in historic preservation at two levels of participation. A two-tier system of allocating HPF funds provides recognition for local governments capable of either assuming substantial responsibilities or opting for minimal participation in the program. Pass-through grant amounts shall be awarded commensurate with the level of participation by the CLG. Threshold level of participation requires the local government to satisfy the five minimum requirements identified in the Code of Federal Regulations, 36 CFR Part 61. Supplemental allocation of funds for expanded level of participation shall be contingent upon satisfying additional requirements. Responsibilities of the CLG shall be complementary to and carried out in coordination with those of the State Historic Preservation Office (SHPO) as outlined in 36 CFR 61.4(b).

THRESHOLD LEVEL OF PARTICIPATION

Any local government is eligible to apply for certification, with the exception of regional commissions and councils of governments. A local government is any general purpose political subdivision of California such as a city or a county. Local governments must:

1. Enforce appropriate state and local legislation for the designation and protection of historic properties,
2. Establish an adequate and qualified historic preservation review commission by local law,
3. Maintain a system for the survey and inventory of historic properties,
4. Provide for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register, and
5. Satisfactorily perform the responsibilities delegated to it by the state.

Local governments may be certified to participate in the CLG program at the threshold level of participation by complying with the following requirements:

- I. Enforce appropriate state or local legislation for the designation and protection of historic properties:
 - A. State enabling legislation provides for local jurisdictions to enact appropriate legislation. California Government Code Sections 65850, 25373, and 37361 enable city and county legislative bodies to provide for "the protection, enhancement, perpetuation, or use of places, sites, buildings, structures, works of art and other objects having a special character or special historical or aesthetic interest or value."
 - B. Local governments are encouraged to adopt local historic preservation ordinances with provisions for designation and protection of historic and archeological resources.
 - C. The appropriate legislation shall be consistent with the intent and purpose of the National Historic Preservation Act as amended in 1980.
- II. Establish an adequate and qualified historic preservation review commission by state or local law:
 - A. Local governments must establish an adequate historic preservation review commission by local law. The commission shall include a minimum membership of five individuals with all members having demonstrated interest, competence, or knowledge in historic preservation.
 - B. Commission members shall be appointed from among professionals in the disciplines of architecture, history, architectural history, planning, archeology, or other historic preservation-related disciplines, such as urban planning, American studies, American civilization, cultural geography, or cultural anthropology, to the extent that such professionals are available in the community. Commission membership shall also include lay members who have demonstrated special interest, competence, experience, or knowledge in historic preservation, American studies, cultural anthropology, cultural geography, or other historic preservation-related disciplines.
 - C. If a special expertise is not represented on the commission for the consideration of National Register nominations or other actions which are normally evaluated by a professional in such discipline, the local government shall obtain professional technical expertise from established organizations, institutions, public agencies, or other commissions, such as the State Office of Historic Preservation (OHP), State Historical Resources Commission, regional archeological information centers, colleges or universities, AIA preservation officers, private preservation consultants, or regional councils of governments.
 - D. The local government must demonstrate that it has made a reasonable effort to fill positions on the commission with professional and lay members as highly qualified, and representing as diverse a range of disciplines, as possible.

- E. Commission members shall be appointed by the chief elected local official and approved by the city council or board of supervisors. The chief elected local official shall make interim appointments to fill unexpired terms in the event of vacancies occurring during the term of members of the commission. The appointing authority shall act within sixty (60) days to fill a vacancy. Terms of office of the commission members shall be staggered and of two (2) year minimum duration (except as provided in the initiation of the commission).
- F. The commission shall meet at least four (4) times per year, with meetings held at regular intervals, in a public place, advertised in advance, and open to the public, pursuant to the California Open Meeting Act. Written minutes of commission meetings shall be kept on file and available for public inspection.
- G. Each commission member is required to attend at least one informational or educational meeting, seminar, workshop, or conference per year that pertains directly to the work and functions of the commission and would be approvable by the state. The annual State Historic Preservation Conference, sponsored by OHP, provides special sessions devoted to the issues, objectives, and responsibilities of commissions.
- H. The commission shall publish procedural rules for registering historical properties identified in a local cultural resources survey program for the National Register of Historic Places, in accordance with the requirements in the National Historic Preservation Act, Section 101(c)(2). The procedural requirements must include standards and criteria for individual properties and districts with boundary identification, property owner notification, public meeting format, and appeal procedures in accordance with established National Register regulations. The CLG does not have the authority to nominate properties directly to the National Register.
- I. The commission shall be responsible for overseeing the compiling, recording, and updating of information on cultural resources within its jurisdiction. The information shall be based on a comprehensive survey which is conducted in conformance with state survey standards and procedures. Surveys completed prior to the certification of a local government must be done in accordance with state standards.
- J. An annual report of the activities of the commission shall be submitted to the state at the end of each calendar year. The reports shall include, but not be limited to, such information as appointments to the commission, resumes of commission members and staff, attendance records of members, official minutes of the commission meetings, revisions in the enabling ordinance if applicable, sponsorship of special programs such as educational workshops or conferences, summaries of environmental review cases requiring commission comments, new landmarks and historic districts designated, review of National Register nominations, cultural resources survey updates, and other pertinent activities performed by the commission.

III. Maintain a system for the survey and inventory of historic properties:

The CLG shall be responsible for organizing, developing, and administering an inventory of cultural resources within the entire spatial jurisdiction of the CLG.

- A. The commission shall develop procedures for conducting an inventory of cultural resources. Survey activities shall be coordinated with and complementary to the state program to ensure that survey results produced by the CLG will be readily integrated into the statewide comprehensive historic preservation planning process.
 1. As part of any ongoing survey effort, procedural requirements must allow for periodic update of survey results on an annual basis as buildings gain maturity and as new areas are incorporated or annexed by the CLG.
 2. The commission must adopt state guidelines for conducting its inventory of historic properties. State-approved inventory forms (DPR 523), encoding sheets (DPR 660), and the California Historic Resources Inventory Survey Workbook shall be used to facilitate integration into the state electronic data system and for statewide comprehensive historic preservation planning purposes.
 3. Procedural standards for evaluation of properties must be consistent with the National Register of Historic Places criteria.
- B. The commission shall establish internal procedures to facilitate the use of survey results in the planning process by the CLG officials and departments. The commission shall submit survey results to the CLG. Copies of the survey must be on deposit at the local planning department and OHP. See IVB(2) below for public access requirements.

IV. Provide for adequate public participation in the local historic preservation program:

- A. The CLG shall provide opportunities for public participation in all responsibilities delegated to the CLG, in accordance with appropriate regulations, standards, and guidelines.
- B. The CLG shall encourage public participation in local historic preservation programs.
 1. Public participation shall be fully encouraged in direct involvement on the local historic preservation commission as professional or lay members. Commission meetings shall be open to the public, with published agenda and minutes in accordance with the California Open Meeting Act. The published agenda shall be mailed in advance of meetings to individuals and citizen organizations interested in the commission's activities.

2. Public participation shall be fully encouraged in the performance of the historic survey program at all levels of completion to identify and inventory significant cultural resources in the jurisdiction of the CLG. Survey results shall be of public record and on file at a public institution, except in the case of sensitive resources, e.g., archeological sites subject to vandalism.
3. Public participation and comment shall be fully encouraged in the nomination process for the National Register of Historic Places program. The CLG shall publish the procedures by which assessments of potential National Register nominations will be administered.

V. Satisfactorily perform the responsibilities delegated to the CLG:

A. The state shall monitor and evaluate the performance of the CLG for consistency with the identification, evaluation, and preservation priorities of the comprehensive state historic preservation planning process.

1. The state shall conduct an annual review of CLGs to assure that each government continues to meet the minimal requirements and is satisfactorily performing its responsibilities. As part of this review, the state shall examine the annual reports submitted by the CLGs, records of the administration of funds allocated from the HPF, and other documents as necessary. The CLG shall make these records available to the state.
2. If the state evaluation indicates that the CLG no longer meets the minimal requirements or that in any other way a CLG's performance is not satisfactory, the state shall document that assessment and recommend to the local government steps to bring its performance up to a satisfactory level. The CLG shall have a period of not less than 30 nor more than 180 days to implement improvements. If the state determines that sufficient improvement has not occurred, the state shall recommend decertification of the local government to the Secretary, citing specific reasons for the recommendation. Performance shall be deemed unsatisfactory if one or more of the following conditions exist or is applicable: a) the commission fails to perform its delegated responsibilities within established time periods; b) the CLG fails to coordinate its responsibilities with the state; c) the commission substantially fails to maintain consistency of its design review decisions with the Secretary's standards for historic preservation; d) the CLG fails to maintain a qualified historic preservation review commission membership or fails to acquire the appropriate expertise for review and comment; e) the CLG fails to enforce the provisions of the local preservation ordinance; f) the CLG fails to comply adequately with proper fiscal management of HPF grants in accordance with OMB Circular A-128, the Single Audit Act of 1984, and the National Register Programs Manual.

B. The state shall conduct financial assistance close-out procedures pursuant to the National Register Programs Manual when a local government is decertified.

- C. CLGs may petition OHP to be decertified voluntarily and without prejudice.
- D. The State shall identify specific responsibilities delegated in common to all CLGs.
- E. The CLG may assume certain responsibilities of recommending properties identified in the CLG jurisdiction to the National Register of Historic Places.
 - 1. The SHPO shall have the sole responsibility of nominating National Register properties directly to the Secretary.
 - 2. Selection of properties for nomination to the National Register shall be based on the results of the local survey program.
 - 3. Procedural guidelines shall specify the process for accepting application requests, property owner notification, public hearing announcements, and coordination with the state.
 - 4. All meetings shall be open to the public at specified intervals and must be in accordance with the California Open Meeting Act. Published agenda and minutes of the public meetings shall be on file with the commission and the state.
 - 5. Decisions of the commission must be presented to the applicant, the property owner, and the state in writing with specific reference to the selected National Register criterion and the appropriate level of significance. The commission shall consider all National Register applications exclusively in accordance with the National Register criteria. Membership of the commission must include or have access to qualified experts knowledgeable in the subject area submitted for review.
 - 6. The CLG shall establish procedures for the National Register nomination process consistent with the requirements in the National Historic Preservation Act, Section 101(c)(2).
 - a. Subsection 101(c)(2)(A) states that "Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the State Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall

make the nomination pursuant to Section 101(a). The State may expedite such process with the concurrence of the certified local government."

- b. Subsection 191(c)(2)(B) states that "If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedure for making a nomination pursuant to Section 101(a). Any report and recommendations made under this section shall be included with any nomination submitted by the state to the Secretary.
7. By mutual written agreement with the local governing body, the state may delegate additional responsibilities to the CLG.

EXPANDED LEVEL OF PARTICIPATION

Local governments may participate at the expanded level of participation by complying with all responsibilities required at the threshold level of participation. By mutual written agreement with the local governing body, the state may delegate additional responsibilities to the CLG.

Local governments may be certified to participate in the program at the expanded level of participation by fulfilling selected elements of the following requirements:

- I. State enabling legislation provides for local jurisdictions to enact appropriate legislation. The CLG shall adopt a historic preservation ordinance with the following provisions:
 - A. Declaration of Policy - A statement of purpose should clearly recite the reasons for enacting the ordinance and specifically contain a general welfare clause illustrating that historic preservation is in the public interest. The policy declaration shall also describe the public benefits possible for the CLG gained through educational, cultural, aesthetic, social, and economic enhancements from historic preservation.
 - B. Preservation Commission - The ordinance shall authorize the creation of a historic preservation commission. Provisions of the ordinance must include specific guidance in the membership composition, qualifications, compensation, appointments, powers, and terms of office of the commission. The commission staffing, budgeting, rule-making authority, and legal jurisdiction overseeing historic preservation activities must be well defined. The ordinance shall give the commission authority to promulgate its own operating rules (by-laws). Rules of procedure adopted by the commission shall be available for public inspection. The area of geographical authority for the commission shall be coterminous with the boundaries of the local jurisdiction.

- C. Historic Survey and Registration - The ordinance shall include provisions for the compiling, updating, and maintaining of an inventory of historic resources located within the jurisdiction of the CLG. The ordinance must also clearly delineate procedures for evaluating and registering both individual historic properties and historic districts.
 - D. Penalties and Severability - Strict criminal and civil penalty provisions must be included to ensure enforcement capability and credibility. Severability shall be included to protect against the disallowance of the total ordinance in the event that one section is determined to be unconstitutional or otherwise invalidated.
 - E. Operational Definitions - The ordinance shall include precise definitions of such terms as preservation commission, historic districts, eligibility criteria, alteration and improvement standards, demolition stays, and other preservation terminology to help clarify and define administrative procedures.
- II. The CLG may adopt a historical preservation element for the local jurisdiction's General Plan, as authorized by the California Government Code. The CLG, in conjunction with the state, shall establish procedures for implementation of the element.
 - III. The CLG shall participate in the environmental review of local projects in accordance with the requirements under the California Environmental Quality Act. The commission may review and comment on permit actions affecting significant listed historic properties and other resources eligible for listing, in accordance with local ordinance requirements and with the California Environmental Quality Act. Procedural guidelines should include standards for demolition stays, design review criteria, anti-neglect requirements, and appeal strategies.
 - IV. The CLG may participate in the review and comment on historic preservation certification applications for tax incentives. The CLG and state may establish procedures for implementation of the investment tax credit program at the local level in conformance with The Secretary of the Interior's Standards for Historic Preservation.
 - V. The CLG may develop educational programs promoting historic preservation at the local level such as, but not limited to, sponsorship of preservation workshops, publication of preservation information, organizing preservation fairs, conducting walking tours, and preparing preservation curricula for schools.
 - VI. Commission members may act in an advisory capacity to other officials and departments within the local government and act as a liaison on behalf of the CLG to individuals and organizations concerned with historic preservation.
 - VII. The CLG may participate in the Mills Act property-tax relief program for owners of historic properties.
 - VIII. The CLG may participate in the Marks Historical Rehabilitation Act for issuance of tax-exempt industrial development bonds, providing that the commission shall serve as all or part of the required citizen advisory board.

- IX. By mutual written agreement with the local governing body, the state may delegate additional responsibilities to the CLG.

CERTIFICATION OF LOCAL GOVERNMENTS

State shall provide a mechanism for certifying local governments to participate in the CLG program. Local governments may submit applications for certification at any time. Application requests shall be submitted by the chief elected local official.

1. The chief elected local official shall request certification from the state in writing, with specific reference to threshold or expanded level of participation. The official request for certification shall include:
 - A. A written assurance by the chief elected local official that the local government fulfills and shall fulfill all the requirements of the certification standards,
 - B. A copy of the local historic preservation legislation and a copy of the local government charter, with description of the boundaries administered by the local jurisdiction,
 - C. Resumes for each of the members of the historic preservation commission,
 - D. Names and resumes, where appropriate, of staff members responsible for administration of the historic preservation program for the commission or local government,
 - E. If begun, evidence of a cultural resources survey performed in the community, with information on the progress and future intent of the survey, and
 - F. A brief explanation of activities proposed by the local government to provide the state with preliminary information on suggested work functions.
2. The state shall respond to the chief elected local official within forty-five (45) days of receipt of an adequately documented written request.
3. A committee of SHPO staff members shall review the certification applications to determine the local government's ability to meet state requirements for the CLG program at either the threshold or expanded level of participation. SHPO concurrence shall be required for final approval of certification of a local government.
4. When a local government's certification request has been approved in accordance with the state's approved certification process, the state shall prepare a written certification agreement for presentation to the local government.
 - A. The certification agreement shall identify the minimum required responsibilities of the local government when certified. The agreement shall also include any additional responsibilities delegated to the CLG.

- B. State shall forward to the Secretary a copy of the approved request and the certification agreement.
- C. If the Secretary does not take exception to the request within fifteen (15) working days of receipt of the state's request, the local government shall be regarded as certified by the Secretary.
- D. The delegation of responsibilities assigned to the CLG may be modified by amending the certification agreement with approval of the Secretary.

TRANSFER OF GRANTS TO CERTIFIED LOCAL GOVERNMENTS

At least ten percent of California's annual HPF allocation shall be transferred to CLGs for implementation of eligible activities which promote the identification, evaluation, nomination, and preservation of their communities' significant cultural resources. Specific activities may include, but not be limited to, adoption of local preservation-related legislation, development of public education programs, establishment of comprehensive communitywide historic preservation plans, nomination of properties to the National Register, administration of a preservation revolving fund, implementation of a permanent administrative staff position responsible for preservation activities, and publication of literature on historic preservation. CLGs may not use HPF grants for the acquisition, development, maintenance, or operation of historic properties. In addition, transferred monies shall not be applied as matching share for any other federal grant or for lobbying purposes.

Any state-directed specific uses of HPF funds shall be for activities for which the state would be eligible for HPF funding, and which are consistent with the state comprehensive historic preservation planning process.

California shall make a reasonable effort to distribute HPF grants among the maximum number of eligible local governments consistent with 36 CFR 61.7(f)(1). Reasonable distribution of funds shall include a consideration of equitable allocations between urban and rural areas and among northern, southern, and central portions of the state. Equitable distribution discourages a disproportionate share of the allocation awarded to a single CLG.

The CLG's share of the HPF shall be of a sufficient amount to produce a specific impact and to generate effects directly as a result of the funds transfer. The state is not required to award funds to all governments that are eligible to receive grants. Program consistency and quality of standards require that the state not award grant funds to all eligible local governments if there is a risk of sacrificing positive, tangible results.

Eligible local governments shall adhere to the state's instructions for allocation of the CLG share of California's annual HPF.

The state shall periodically notify all CLGs of the funding availability of HPF grants to qualified local governments.

The CLG receiving a portion of the local share of the state's annual HPF must satisfy certain minimum requirements.

1. The CLG must maintain adequate financial management systems in accordance with the standards specified in the most recent OMB Circular A-128.
 - A. Local financial management systems shall be auditable pursuant to the General Accounting Office's Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.
 - B. The state shall be responsible, through financial audit, for the proper accounting of CLG share monies in accordance with OMB Circular A-128, the Single Audit Act of 1984 (Public Law 98-502).
2. The CLG shall adhere to all requirements of the National Register Programs Manual, which sets forth administrative procedures and policies for HPF grants awarded by the Secretary.
3. Indirect costs may be charged as part of the CLG only if the CLG meets the requirements of the National Register Programs Manual and has a current indirect cost rate approved by the cognizant federal agency.
4. The CLG must adhere to any requirements mandated by Congress regarding the use of the HPF monies.
5. The CLG shall meet all certification eligibility requirements during the grant period, as specified in the written grant agreement between the state and the CLG.

The state shall award funds on a competitive basis to CLGs, contingent upon the following priorities and criteria.

1. The CLG demonstrates a clear understanding of state and local preservation programs contributing toward the identification, evaluation, and protection of significant cultural resources within the jurisdiction of the local government.
2. The CLG provides adequate matching local share (50%) as match for the federal grant-in-aid.
3. A CLG requesting expanded level of participation shall receive higher selection priority.
4. The CLG clearly presents specific goals and objectives that are realistically attainable within the funding period.

Within thirty (30) days after the state receives formal obligation of funds from the Department of the Interior, the state shall notify CLGs of the successful grant awards. The state shall submit the selected CLGs to the State Historical Resources Commission for concurrence. The state shall make available to the public, upon request, the rationale for the applicants selected and the amounts awarded.

APPENDIX

DEFINITIONS

For purposes of identification, the:

"Approved State Program" means a state historic preservation program that has been approved by the Secretary of the Interior.

"Certified Local Government" means a local government that has been certified to carry out the purposes of the National Historic Preservation Act, as amended.

"Chief Elected Local Official" means the elected head of a local government.

"CLG Share" means the funding authorized for transfer to local governments.

"Comprehensive Historic Preservation Planning" means an ongoing process that is consistent with technical standards issued by the Department of the Interior and which produces reliable, understandable, and up-to-date information for decision-making related to the identification, evaluation, and protection/treatment of historic resources.

"Comprehensive Statewide Historic Preservation Plan" means the part of the planning process that conforms to the Secretary's Standards for Preservation Planning and is approved as part of the State Program Approval Process. The comprehensive plan entails organizing a logical sequence of preservation information pertaining to identification, evaluation, registration, and treatment of historic properties, and setting priorities for accomplishing preservation activities.

"Historic Preservation Fund" means the monies accrued under the Outer Continental Shelf Lands Act, as amended, to support the program of matching grants-in-aid to the states for historic preservation programs and projects.

"Historic Preservation Review Commission" means a board, council, commission, or other similar collegial body.

"Local Government" means a city, county, parish, township, municipality or borough, or any other general-purpose political subdivision of any state.

"National Register of Historic Places" means the national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture, maintained by the Secretary of the Interior.

"The National Register Programs Manual" means the manual that sets forth NPS administrative procedures and guidelines for activities concerning the federally-related historic preservation programs of the states, local governments, and the National Trust for Historic Preservation. This manual includes guidelines and procedures for the administration of the historic preservation grants-in-aid programs and supersedes the HPF Grants Management Manual.

"National Park Service" means the bureau of the Department of the Interior to which the Secretary of the Interior has delegated the authority and responsibility for administering the National Historic Preservation Program.

"Secretary" means the Secretary of the Interior. Unless otherwise stated in law or regulation, the Secretary has delegated the authority and responsibility for administering the National Historic Preservation Program to the National Park Service.

"Secretary's Standards and Guidelines" means the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The standards and guidelines provide technical information about archeological and historic preservation activities and methods.

"State" means the State of California, as represented by the State Office of Historic Preservation.

"State Historic Preservation Officer" is the official within California who has been designated and appointed by the Governor to administer the state historic preservation program in California.

"State Program" means the state historic preservation program in California.

"Subgrantee" means the certified local government to which a subgrant is made by the state and which is accountable to the state for use of the funds provided.

Professional Qualifications Standards

The following requirements are those used by the National Park Service, and have been previously published in the Code of Federal Regulations, 36 CFR Part 61. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of fulltime work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

History

The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historic organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

Archeology

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
2. At least four months of supervised field and analytic experience in general North American archeology; and
3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

Architectural History

The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

Architecture.

The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time experience in architecture; or a State license to practice architecture.

Historic Architecture

The minimum professional qualifications historic in architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
2. At least one year of full-time professional experience on historic preservation projects.

Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

DOCUMENTS DEPARTMENT

